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Regulations, Orders, and Decisions with Index-Digest

NATIONAL WAR LABOR BOARD
BUREAU OF INTERNAL REVENUE
OFFICE OF ECONOMIC STABILIZATION

IN THIS ISSUE

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Decisions reported are cumulated and published periodically in bound volumes without change of page numbers

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Cumulative

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Action on Cases for Review by National War Labor Board

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The cases are arranged alphabetically. Each case is identified by name and number and is followed by a statement of the region or commission by which the case was originally decided, the volume and page reference in War Labor Reports where the decision is reported, the party on whose petition appeal was taken, and the action taken upon it. If the review is on the Board's motion, it is so stated.

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★ Southern Aircraft Corp. (No. 111-12882-D). Petition for review of decision of Regional Board VIII (23 War Lab. Rep. 459) denied. Company petition on issue of the meaning of the term grievance in contract.

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Office of Economic Stabilization—

Severance Pay: Policy Governing Approval and Disapproval

[ED. NOTE: Appearing below are a press release explaining disapproval by the Director of Economic Stabilization of a severance-pay plan agreed upon in the case of the United States Cartridge Company and approval of a severance-pay plan agreed upon in case of the Graphic Arts Association; letters of disapproval and of approval; and a statement by CIO labor members of the War Labor Board.]

EXPLANATORY PRESS RELEASE

WLB Press Release B-2175, Issued July 28, 1945

William H. Davis, Director of Economic Stabilization, said today severance pay agreements voluntarily made by an employer spending his own money should be encouraged. He ruled, however, that severance pay plans involving an appreciable increase in costs to the Government may not be approved by the Office of Economic Stabilization.

"Voluntary severance pay plans which have been agreed to by the employer and the bargaining agent for the employees, involving the employer's own funds, are stabilizing," Mr. Davis said. "Such plans tend to offset the decline in workers' wages. However, in the case of payments made by a cost-plus fixed-fee contractor paying out government funds by reimbursement, severance plans could not be approved if they involve an appreciable increase in costs to the Government."

The statement on severance payments was made as the Director of Economic Stabilization announced approval of a plan requested jointly by the Graphic Arts Association of Washington, D. C., and three unions affiliated with the AFL and disaproval of another proposed for employees of the U. S. Cartridge Company at a St. Louis ordnance plant operated for the Government.

OES rulings on these severance plans, which were approved by the National War Labor Board, were required in order to determine if they would necessitate increases in costs to the Government.

The Director of Economic Stabilization approved a proposed severance pay plan affecting employees of firms which are members of the Graphic Arts Association of Washington, after findings (by the public printer, the War and Navy Departments) that operation of the plan would have no appreciable effect on prices paid by the Government for printing.

The plan provided payment of two weeks' wages at the regular rate for the last previous week of employment "when an employee with 12 months or more continuous employment in any single plant covered by this agreement is discharged or laid off, otherwise than as a result of her (his) own willful breach of duty or gross misconduct which a joint committee of the Association and the union has acknowledged."

Employees affected by the Graphic Arts plan are members of the International Brotherhood of Bookbinders (Women's Bindery Union No. 42 and Journeymen Bookbinders Union No. 4); International Typographical Union (Mailers Union); International Printing Pressmen and Assistants Union (Printing Pressmens' Union No. 1 and Washington Press Assistants Union). All are AFL affiliates.

On Feb. 21, 1945, Judge Fred M. Vinson, former Director of Economic Stabilization, approved an identical plan involving the Graphic Arts Association, the Employing Printers of Washington, and the International Typographical Union.

The Director of Economic Stabilization denied approval of the plan submitted jointly by the U.S. Cartridge Company, operating the St. Louis ordnance plant for the Government and ten unions representing approximately 14,000 employees in the plant. The plan would have provided one week's pay after 6-12 months service; two weeks pay after 12-18 months; three weeks pay after 18-24 months; and four weeks pay after 24 months or longer.

The War Department estimated cost of the plan at $2,210,000.

Employees in the plant are represented by the International Brotherhood of Electrical Workers; the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Help-

ers; the International Association of Machinists; the International Brotherhood of Firemen and Oilers; the United Brotherhood of Carpenters and Joiners; the United Association of Plumbers and Steamfitters, all AFL affiliates; the United Electrical, Radio and Machinery Workers, CIO; the Brotherhood of Railway Trainmen, the Brotherhood of Locomotive Engineers, and the United Brotherhood of Welders, Cutters and Helpers, all independent.

In denying approval of the St. Louis ordnance plan, Mr. Davis said the proposed agreement "cannot be treated as a voluntary agreement entered into by an employer spending his own money."

In a letter advising the National War Labor Board of his action, Mr. Davis declared:

"The record shows that the U.S. Cartridge Company, as the private operator of the government-owned plant, under a cost-plus fixed-fee contract, joined with ten unions in an application for the approval of the severance pay plan. I am informed that the contractor has assumed that the United States Government would reimburse for all the costs of the plan if approved. An application under these circumstances cannot be treated as a voluntary agreement entered into by an employer spending his own money. The record shows that the company operating the government facilities does not have a similar plan in any of its privately owned plants and that the operation of the plant involved in this case soon is to be discontinued."

Layoffs in the St. Louis ordnance plant began July 9, 1945. The plant is expected to be virtually shut down on Aug. 30, 1945.

"The record further shows," Mr. Davis continued, "that the severance pay plan cannot be adopted without substantial cost increases to the Government."

Under such circumstances, he pointed out, the War Labor Board is required, under the directives of the Office of Economic Stabilization of Mar. 8 [22 War Lab. Rep. No. 21, XXIII; WCDS 537] and Apr. 24, 1945 [23 War Lab. Rep. No. 4, V], pertaining to nonbasic wage increases, to make a finding that "such adjustments or changes are in accordance with the substantial practice in the industry or the area which it would be inequitable not to follow in the particular case and which would not be unstabilizing to the area or industry or that they are equitably required to meet a special suituation or problem within a company or industry and consequently are not of a precedent-making character."

The War Department has expressed the opinion that the precedent established in the ordnance case would give rise to many cases in similar facilities in the St. Louis and other areas which would involve very substantial increases in ultimate costs to the Government.

In referring the case to the Director of Economic Stabilization, the War Labor Board pointed out: "* * * under the Board's policy of approving reasonable severance pay plans we have approved plans of this type and therefore find that in our opinion it is permissible under wage stabilization rules. The War Department has raised the question of whether it is a reasonable expenditure of public funds. We think that question is not for the Board to decide."

In conclusion Mr. Davis declared:

"The policy of the Government has been to advocate improvements in the unemployment compensation system, rather than a new system of severance pay, to meet the needs of the reconversion period. In his budget message of Jan. 13, 1944, President Roosevelt said: 'I prefer an extension of coverage and liberalization of unemployment benefits to any special legislation, such as that providing for dismissal payments through war contractors.' War Mobilization Director Byrnes on Apr. 14, 1944, stated in part as follows:

"'Some persons have urged that a dismissal wage be paid to workers on their discharge and that the cost of dismissal wages be recognized by the Government as part of the cost of contract termination. However, the dismissal wage would bear no exact relation to the needs of the workers, and some who might quickly find new jobs would get more than they needed while others would get much less. If the dismissal wages were limited to employees of war contractors, it could unfairly discriminate against workers in essential civilian industries. And it is difficult to draw a line between war workers and nonwar workers. 'I think the most constructive approach to this problem is to supplement ex-

isting state unemployment benefits to the extent necessary to give workers, during the transition from war to peace, suitable unemployment benefits to be prescribed in a federal demobilization law.'

"President Truman, in his message of May 26, 1945, proposed that the Federal Government supplement payments under the state laws so that the weekly benefits and the coverage of unemployment compensation would be extended to meet more adequately the human needs of reconversion. As Judge Vinson stated in his report of July 1, 1945, 'an adequate unemployment compensation law is our number one legislative requirement for reconversion.'"

"I cannot, of course, approve the expenditure of substantial funds of the Federal Government in conflict with this announced policy of the Government."

LETTER OF DISAPPROVAL

Letter to George W. Taylor, Chairman of War Labor Board, dated July 24, 1945

I have given thorough consideration to the materials submitted by the National War Labor Board in connection with the case listed above. For the reasons set forth below, I have found that the severance pay plan proposed in this case may not be approved by this office.

(1) The record shows that the U. S. Cartridge Company, as the private operator of the government-owned plant, under a cost-plus-fixed-fee contract, joined with ten unions in an application for the approval of a severance pay plan. I am informed that the contractor has assumed that the United States Government would reimburse for all the costs of the plan if approved. An application under these circumstances cannot be treated as a voluntary agreement entered into by an employer spending his own money. The record shows that the company operating the government facilities does not have a similar plan in any of its privately owned plants and that operation by the company of the plant involved in this case is soon to be discontinued.

(2) The record further shows that the severance pay plan cannot be adopted without substantial cost increase to the Government. Under these circumstances the War Labor Board is required, under the directives of this Office of Mar. 8 and Apr. 24, 1945, to make a finding: "(1) that such adjustments or changes are in accordance with the substantial practice in the industry or the area which it would be inequitable not to follow in the particular case and which would not be unstabilizing to the area or industry or (2) that they are equitably required to meet a special or unique situation or problem within a company or industry and consequently are not of a precedent-making character". The War Labor Board has made neither finding in this case. The report of June 14, 1945, of the Headquarters Army Service Forces indicates that it is the opinion of the War Department that the precedent established in this case would give rise to many cases in similar facilities in this and other areas, which would involve very substantial increases in ultimate costs to the Government.

(3) The policy of the Government has been to advocate improvements in the unemployment compensation system, rather than a new system of severance pay, to meet the needs of the reconversion period. In his budget message of Jan. 13, 1944, President Roosevelt said: "I prefer an extension of coverage and liberalization of unemployment benefits to any special legislation, such as that providing for dismissal payments through war contractors". War Mobilization Director Byrnes, on Apr. 14, 1944, stated in part as follows:

"Some persons have urged that a dismissal wage be paid to workers on their discharge and that the cost of dismissal wages be recognized by the Government as a part of the cost of contract termination. However, the dismissal wage would bear no exact relation to the needs of the workers, and some who might quickly find new jobs would get more than they needed while others would get much less. If the dismissal wages were limited to employees of war contractors, it could unfairly discriminate against workers in essential civilian industries. And it is difficult to draw a line between war workers and nonwar workers.

"I think the most constructive approach to this problem is to supplement existing state unemployment benefits to the extent necessary to give workers, during the transition from war to peace, suitable unemployment benefits to be prescribed in a federal demobilization law."

President Truman, in his message of May 26, 1945, proposed that the Federal Government supplement pay-

ments under the state laws so that the weekly benefits and the coverage of unemployment compensation would be extended to meet more adequately the human needs of reconversion. As Judge Vinson stated in his report of July 1, 1945, "an adequate unemployment compensation law is our number one legislative requirement for reconversion."

I cannot, of course, approve the expenditures of substantial funds of the Federal Government in conflict with this announced policy of the Government.

[signed] William H. Davis
Director of Economic Stabilization

LETTER OF APPROVAL

Letter to George W. Taylor, Chairman of War Labor Board, dated July 24, 1945

I have examined the materials submitted by the National War Labor Board in connection with the above cases. I have also considered the report of the War Department, the Navy Department, and the Government Printing Office indicating that the proposed adjustment will not affect appreciably costs outside government.

Although the War Labor Board has made no findings in these cases under Par. G of the April 24, 1945, directive, I note that these cases merely extend to the worker the adjustments previously approved by the Director of Economic Stabilization on Feb. 21, 1945, in Case No. 3-30356 and 30310 for the typographers.

The wage adjustment approved by the Third Regional War Labor Board in these cases may be put into effect.

[Signed] William H. Davis,
Director of Economic Stabilization.

STATEMENT BY CIO LABOR MEMBERS OF WLB

WLB Press Release B-2175, dated July 28, 1945

Mr. Davis denied a severance pay plan that the National War Labor Board found to be reasonable and permissible under wage stabilization rules. Mr. Davis relies heavily on what he considers as "government policy." He fails to note that "government policy," although full of good intentions, has so far produced nothing for the workers thrown out of war industries.

Mr. Davis, in approving a severance pay plan requested by a private employer and three unions, found such plans "stabilizing." He also found that "such plans tend to offset the decline in workers wages."

As to cost-plus fixed-fee contractors, he totally forgets the "stabilizing" influence that severance pay plans have. Evidently he does not find it equally necessary to "offset the decline in workers wages" when those workers are paid out of government funds. Apparently Mr. Davis believes that private employers have a greater obligation toward their employees than does the Government towards its war workers.

This reasoning is fallacious and disgraceful.

War Labor Board—

Regulations, Part 803, General Orders, Amended

GENERAL ORDER No. 4 *

Extension of General Order No. 4

Sec. 803.4—Wage Adjustments for Small Business.

(d) * * *

Extension of General Order No. 4

The National War Labor Board, under this paragraph, has approved the following exceptions to the exemption provided for in Par. (a) of this order:

(55) All employers in the retail fur industry in Allegheny County, Pa. (Approved Apr. 11, 1945)

(56) All employers in the bakery industry in Cuyahoga County, O. (Approved Apr. 12, 1945)

(57) All employees in the fur industry in Boston, Mass. (Approved Apr. 18, 1945)

(58) All employees in the logging industry and the saw mill industry in Gogebic, Ontonagon, Houghton, Keewenaw, Paraga, Iron, Marquette, Dickinson, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac, and Chippewa Counties, all in the state of Michigan; and Douglas, Bayfield, Ash-

* Ed. Note: This compilation includes all exceptions to General Order 4 issued subsequent to publication of "Regulations, Part 803, General Orders and Interpretations" at 21 War Lab. Rep. XXXVII. The latest amendment in this group is No. 67, issued by WLB Press Release B-2188, Aug. 9, 1945.

land, Iron, Vilas, Forest, Florence, Marinette, and Oneida Counties, all in the state of Wisconsin, including the logging industry area, with the following specific provisions:

(1) That no employee presently in the service of an employer in the logging and saw mill industries in the area referred to above heretofore exempt under General Order No. 4 shall have his or her compensation reduced by reason of this action so long as he remains in the service of that employer.

(2) That new employees of any such employers shall be hired either:

(a) At the rates the employer had in effect Oct. 3, 1942, in respect to wages, or Oct. 27, 1942, in respect to salaries, or

(b) At the rates properly adjusted where no approval is required under the appropriate general order of the National War Labor Board, or

(c) At the rates approved for the particular employer by the Eleventh Regional War Labor Board. (Approved Apr. 16, 1945)

(59) Small firms in the metal plating and enameling shops in Los Angeles County, Calif., which shall be defined as establishments in which one or more employees are engaged in the electro-plating, plating, or enameling of metal products, and establishments in which a majority of the employees are engaged in the polishing of such products. (Approved Apr. 23, 1945)

(60) Summer resorts including resort hotels, boarding houses, adult camps operated for profit, dude ranches, and similar types of establishments throughout New York State and northern New Jersey inclusive of the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren. (Approved May 11, 1945)

(61) Restaurants throughout New York State and Monmouth County, N. J., which are open only between May 1 and Oct. 1 (Approved May 11, 1945)

(62) Commercial garages performing repair work for the public in the Metropolitan Kansas City area. (Approved May 11, 1945)

(63) All shops engaged in welding work in the oil well servicing industry in the County of Lea, State of New Mexico. (Approved May 24, 1945)

(64) The general automobile repair industry in the metropolitan areas of Chicago (defining Chicago as including all of Cook County, Ill., and Lake County, Ind.), Milwaukee, Wis.; Indianapolis, Ind.; and the Twin Cities, Minn.; and also Peoria, Ill. (Approved June 6, 1945)

(65) Retail hardware stores in San Francisco and Alameda Counties, Calif., according to the following definition: Retail hardware stores—stores selling at retail any combination of the basic lines of hardware such as tools, builders hardware, and paint and glass; housewares and household appliances; and cutlery. Does not include stores selling paint only, or paint, glass, and wallpaper. (Approved June 20, 1945)

(66) Cleaning and dyeing industry within the city of San Jose, Calif., according to the following definition: Establishments engaged in dry cleaning, dyeing, and/or pressing apparel and household fabrics. (Approved June 20, 1945)

(67) Export packaging establishments in the counties of Los Angeles, San Francisco, San Mateo, Alameda, Contra Costa, and Solano, and the City of Stockton. Such establishments are defined as those primarily engaged in packing, crating, or otherwise preparing goods for overseas shipment immediately prior to placement of goods at the ship's side. (Approved May 29, 1945).

Strikes: WLB Refusal to Approve Agreements Not Negotiated by Collective Bargaining

Text of War Labor Board Telegram to Local 104, International Typographical Union (AFL), Aug. 4, 1945. Made Public Aug. 5, 1945.

The National War Labor Board has been informed that members of Local 104, International Typographical Union (AFL), employed by three Birmingham newspapers, the *Age Herald*, the *Birmingham News*, and the *Birmingham Post*, are continuing a strike which has virtually paralyzed the dissemination of news through the press in the city of Birmingham. This strike is in flagrant violation of the national no-strike policy. The procedures of the National War Labor Board provided full opportunity for the hearing of any

dispute which your union may have with Birmingham newspaper publishers.

The program of the International Typographical Union to enforce acceptance by employers of terms of employment without resort to collective bargaining is a repudiation by one group within the labor movement of the procedures wholeheartedly accepted by labor for the peaceful settlement of wartime labor disputes. The program is also contrary to the War Labor Disputes Act [9 War Lab. Rep. VII; WCDS 5] under which the War Labor Board has the duty, when a dispute is certified to it, "to provide by order the wages and hours and all other terms and conditions (customarily included in collective bargaining agreements) governing the relations between the parties."

In view of this clear Congressional mandate that wages and hours and all other terms and conditions of employment, when in dispute, must be decided by the Board, the Board ruled in its resolution of July 14, 1945, that any purported agreement which may be negotiated through strike action pursuant to the practice of the international union will be held to be in violation of public policy as embodied in the War Labor Disputes Act. This means that, even if an agreement should be brought about through your present strike action pursuant to the present policy of the international union, the agreement will not be approved, and the issues covered by the agreement will be decided by the Board, upon termination of the strike, as an unresolved labor dispute.

It follows, therefore, that the continuation of the strike in Birmingham will only serve to delay final settlement of the issues in dispute. Moreover, under the Board's ruling of July 14, the Board will take into consideration, in passing on the question of retroactivity of any wage adjustment which may finally be provided for, the effects of the strike and of the policy pursued by the union. Consequently, the continuance of the present strike places in jeopardy any retroactive wage adjustment which might finally be ordered if adjustments were found to be fair and equitable. The members of the union, therefore, have everything to lose and nothing to gain by prolonging the strike.

In its statement of July 14, 1945, [25 War Lab. Rep. No. 407], the Board referred to the contention of the union that its laws are not subject to collective bargaining and that this is in accordance with the past practice in the industry and the present understanding of many publishers. The Board pointed out that "the union will have a full opportunity in hearings on the merits to develop the relation between the past practice in the industry and the present dispute after it has abandoned its position that its disputes with various publishers are beyond the Board's jurisdiction and above the law." Your union has the right to avail itself of that opportunity, but the Board will not inquire into the merits of any claim which might be made regarding the obligation of the Birmingham newspapers to accept union laws in accordance with past practice until after the strike has been terminated, and the whole case has been submitted to the Board in accordance with the Act of Congress and the National no-strike policy.

Therefore, pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, the National War Labor Board directs that you use the full authority of your office to effect an immediate resumption of operations at the *Age Herald*, the *Birmingham News*, and *Birmingham Post*.

V-J Day: Payment for Time Not Worked

Resolution of National War Labor Board, Adopted Aug. 13, 1945

Following the official announcement of the surrender of Japan, employers may, without violating the wage stabilization law:

(1) Excuse employees from work without loss in pay for V-J Day or such holiday period as may be specified by Presidential proclamation and, in addition, for a period not exceeding eight working hours which may intervene between the official announcement and the period so specified by Presidential proclamation,

(2) Consider the regularly scheduled hours not worked by employees so excused during such periods as

Memorandum Decisions of National War Labor Board

hours worked for the purpose of computing overtime or premium pay, and

(3) Compensate employees who are required to work during such periods at rates equivalent to the rates paid by the employer for work performed on any other holidays recognized by the employer or, in lieu thereof, grant compensatory time off to such employees.

ANNISTON WAREHOUSE CORP.—

In re ANNISTON WAREHOUSE CORPORATION (ANNISTON ORDNANCE DEPOT) [Bynum, Ala.] *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS OF AMERICA, LOCAL B-136 (AFL). Case No. 111-11823-D, June 20, 1945 (made public Aug. 1, 1945).

Affirming 21 War Lab. Rep. 638.

Majority decision of Board affirming order of Regional Board IV (Atlanta). Public members concurring: Edwin E. Witte, Lewis M. Gill, Jesse Freidin, and Nathan P. Feinsinger. Labor members dissenting on acceptance in part of company petition and Par. I: Elmer E. Walker, James A. Brownlow, Delmond Garst, and Carl J. Shipley. Employer members dissenting on Par. II: William Maloney, S. Bayard Colgate, Earl Cannon, and Vincent P. Ahearn.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, in so far as it relates to the issue of automatic progression, the petition filed by the company for review of the Fourth Regional War Labor Board's directive order of Jan. 30, 1945, in the above entitled case and having reviewed the merits of the case with respect to this issue, hereby orders:

I. The issue of automatic length-of-service increases is returned to the parties for negotiations.*

II. That part of the petition for review which relates to the issue of vacations is hereby denied.

III. The terms and conditions of employment set forth in the Fourth Regional War Labor Board's directive order of Jan. 30, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

* ED. NOTE: The Board affirms the action of the Regional Board at 21 War Lab. Rep. 638 under Par. I, 2, Wages, in which the parties are ordered to negotiate the question.

ATLANTIC STEEL CASTINGS CO.—

In re ATLANTIC STEEL CASTINGS COMPANY [Chester and Crum Lynne, Pa.] *and* INTERNATIONAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, LOCAL 48 (CIO). Case No. 111-11421-D, June 22, 1945 (made public Aug. 1, 1945).

Majority decision of Board amending order of Regional Board III (Philadelphia). Public members concuring: Edwin E. Witte and Jesse Freidin. Labor members dissenting on acceptance in part of company petition and from Par. I: John Brophy and Elmer E. Walker. Employer members dissenting on Par. II: Earl Cannon and Walter Knauss.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, in so far as it relates to the issue of a night-shift differential, the petition filed by the company for review of the Third Regional War Labor Board's directive order of Mar. 29, 1945, in the above entitled case and having reviewed the merits of the case with respect to this issue, hereby orders:

I. Sec. I (4) of the said directive order of Mar. 29, 1945, is modified to pro-

vide for payment of a night-shift premium of 5 cents an hour for the second shift and a premium of 10 cents an hour for the third shift.*

II. That part of the petition which relates to premium pay for work on the sixth and seventh consecutive days is hereby denied.

III. The terms and conditions of employment set forth in said directive order of Mar. 29, 1945, as herein modified shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

BEST FOODS, INC.—

In re BEST FOODS, INC. [Buffalo, N. Y.] *and* FLOUR, FEED AND CEREAL WORKERS UNION, LOCAL 19184 (AFL). Case No. 111-11702-D, June 14, 1945 (made public Aug. 1, 1945).

Majority decision of Board remanding order of Regional Board II (New York). Public members concurring: Edwin E. Witte and Jesse Freidin. Employer members concurring: Earl Cannon and Frederick S. Fales. Labor members dissenting: Elmer E. Walker and Carl J. Shipley.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition filed jointly by the parties to the above entitled case for review of the Second Regional War Labor Board's directive order of Jan. 6, 1945, hereby takes the following action:

The said directive order dated Jan. 6, 1945, in so far as it relates to wage adjustments for female and male workers in the plant, is remanded to the Second Regional War Labor Board for reconsideration in the light of the report of the hearing officer in this case.†

CITY NATIONAL BANK & TRUST CO. OF CHICAGO—

In re CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO *and* BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION (PROTECTIVE SERVICE EMPLOYEES' UNION OF CHICAGO), LOCAL 240 (AFL). Case No. 3866-D, Apr. 20, 1945 (made public Aug. 1, 1945).

Amending 22 War Lab. Rep. 468.

Majority decision of Board amending prior order. Public members concurring: Nathan P. Feinsinger and Jesse Freidin. Employer members concurring: Walter Knauss and Charles S. Roberts. Labor members dissenting: Robert J. Watt and John Brophy.

Supplementary Directive Order No. 2

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted that part of the company's petition for reconsideration which relates to the date of expiration of the escape period provided for in the Board's directive order of Jan. 22, 1945 [22 War Lab. Rep. 468], in the above entitled case, hereby takes the following action:

Par. 8 (a) of the said directive order of Jan. 22, 1945, is hereby corrected to provide that the escape period shall expire 15 days from the date of mail-

* ED. NOTE: The Regional Board directed a ten per cent premium for both second and third shifts on the ground that a large number of employees in the industry and area were receiving such premiums. The rates ordered by the National Board, however, are in line with those paid by the majority of similar companies in the area. (Information supplied by WLB staff.)

* ED. NOTE: The Regional Board denied an increase in rates for female employees on the ground that any increase in present rates would bring the company's average rate above the prevailing rate for comparable jobs in the area. The parties had agreed to the rates during hearings on a dispute before the Board's hearing officer. The hearing officer recommended that the Board approve the rates in order to correct intra-plant inequalities. (Information supplied by WLB staff.)

ing of this supplementary directive order No. 2.*

* ED. NOTE: Through an oversight, the Regional Board fixed the escape period as 15 days after the date of its directive order rather than as 15 days after the mailing of said order. (Information supplied by WLB staff.)

DEXTER CO.—

In re DEXTER COMPANY [Fairfield, Iowa] *and* INTERNATIONAL MOLDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL 159 (AFL). Case No. 111-10803-D, June 16, 1945 (made public Aug. 1, 1945).

Majority decision of Board remanding order of Regional Board VII (Kansas City). Public members concurring: Edwin E. Witte and Nathan P. Feinsinger. Employer members dissenting on acceptance in part of union's petition and Pars. I and III: Earl Cannon and Horace Horton. Labor members dissenting on denial in part of union's petition and Par. II: Elmer E. Walker and Carl J. Shipley.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petitions filed by the parties and having accepted in part the petition filed by the union for review of the directive order dated Feb. 13, 1945, of the Regional War Labor Board for the Seventh Region, issued in the above entitled case and having reviewed the merits of the case with respect to a guaranteed rate for pieceworkers, hereby decides the dispute between the parties and orders:

I. Guaranteed Rate for Pieceworkers

This issue is hereby remanded to the Seventh Regional War Labor Board for the establishment of a guaranteed hourly rate for piece workers. *

* ED. NOTE: The Regional Board gave no basis for its denial of the union's request for guaranteed hourly rates for pieceworkers. The National Board remanded this issue in the light of established Board policy which grants incentive workers time-rate bracket minima for appropriate job classifications as hourly guaranteed rates. The company contended that, if piece rates were guaranteed, much of their incentive effect would be nullified. (Information supplied by WLB staff.)

II. The remainder of the union's petition for review is hereby denied.

III. The company's petition for review is hereby denied.

IV. The request for an oral hearing is hereby denied.

V. Subject to the provision of Par. I above, the terms and conditions set forth in said directive order of Feb. 13, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

EAGLE ELECTRIC MFG. CO.—

In re EAGLE ELECTRIC MANUFACTURING COMPANY [Long Island City, N. Y.] *and* UNITED OFFICE AND PROFESSIONAL WORKERS OF AMERICA, LOCAL 16 (CIO). Case No. 5750-D, June 22, 1945 (made public July 27, 1945).

Majority decision of Board amending order of Regional Board II (New York). Public members concurring: George W. Taylor and Nathan P. Feinsinger. Employer members concurring: William Maloney and Lee H. Hill. Labor members dissenting on acceptance of company petition: Delmond Garst and James A. Brownlow.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition filed by the company in the above entitled case for review of the Second Regional War Labor Board's directive order dated Nov. 30, 1944, and having reviewed the merits of the case, hereby orders:

The said directive order of Nov. 30,

1944, is hereby modified by substituting the following for Par. B thereof:

At periodic intervals to be negotiated by the parties, each employee shall be the subject of consideration by the employer to determine whether or not the employee has satisfied the standards of meritorious performance. If the employer determines that the performance of the employee warrants, a merit adjustment in rates shall be made accordingly, effective as of the quarterly review date. A list of the employees to whom increases have been granted shall be furnished by the employer to the union. Merit reviews, either of individual employees or of groups of employees, may, by agreement of the company and the union, be made at different intervals from those hereby prescribed. *

F. FEINER & SONS, INC.—

In re F. FEINER & SONS, INC. [New York, N. Y.] *and* UNITED CONSTRUCTION WORKERS (UNITED MINE WORKERS OF AMERICA), LOCAL 178 (Ind.). Case No. 111-8262-D, June 29, 1945 (made public Aug. 1, 1945).

Majority decision of Board amending order of Regional Board II (New York). Public members concurring: Lewis M. Gill and Edwin E. Witte. Labor members dissenting on acceptance of company's petition and Pars. I, IIa, and IIB: Elmer E. Walker and David R. Stewart. Employer members dissenting on Pars. IIC, IIF, and III: Hoey Hennessy and S. Bayard Colgate.

Directive Order No. II

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, in so far as it relates to wages, the petition for review of the Second Regional War Labor Board's interim directive order of Nov. 8, 1944, and having considered the remaining issues set forth in this petition which were not disposed of by the Board in its directive order No. I of Mar. 29, 1945, and having accepted the petition for review of the Second Regional War Labor Board's directive order of Nov. 30, 1944, and having reviewed the merits of the case with respect to those issues on which the petitions were accepted, hereby decides the dispute between the parties and orders:

I. Wages

Par. 10(e) of the said interim directive order is hereby amended to read as follows:

An employee, when hired, shall be paid the minimum rate for the job classification in which he is hired. The hiring arrangements shall be subject to the provisions of General Order No. 31 [23 War Lab. Rep. No. 1, IV; WCDS 143]. †

II. Merit Progression Schedule

The said directive order is hereby modified to provide that the following be substituted for Pars. A, B, C, D, and F. ‡

A. The company and the union shall, by negotiation, establish objective standards of performance which shall fairly reflect the efficiency, skill, and production requirements (as measured by such factors as quality of output, quantity of production, and attendance) which should be met by employees of various classifications as a condition of their being advanced within the applicable rate ranges.

B. At periodic intervals to be negotiated by the parties, each employee shall be the subject of consideration by the employer to determine whether or not the employee has satisfied the standards of meritorious performance. If the employer determines that the performance of the employee warrants, a merit adjustment in rates shall be made accordingly. Effective as of the review date. A list of the employees to whom increases have

* ED. NOTE: The Regional Board had ordered quarterly review. The company, in appealing the decision, asked that review be limited to once a year, pointing out that employees involved are clerical employees and contending that it was not possible to establish performance standards for such workers every three months. (Information supplied by WLB staff.)

† ED. NOTE: With respect to paying minimum job rates to new employees, the National Board's order amends the Regional Board's order only by adding the sentence referring to General Order 31.

‡ ED. NOTE: With respect to the merit progression schedule, the Regional Board's and the National Board's orders in this case are identical with their respective orders in the case of the Rane Tool Co., Inc., 19 War Lab. Rep. 936 and 24 War Lab. Rep. 482.

been granted shall be furnished by the employer to the union. Merit reviews, either of individual employees or of groups of employees, may, by agreement of the company and the union, be made at different intervals from those hereby prescribed.

C. Any claim that the company has exercised discrimination or has improperly measured the employee's performance with reference to agreed upon standards may be submitted to the grievance procedure of the contract and, if necessary, to arbitration.

D. Merit adjustments in an individual employee's hourly wage rates shall be in steps of 5 cents, or one-half of the rate range in that employee's classification, whichever may be smaller; except that a lesser amount may be granted when necessary in order to raise an employee to the top of the rate range in his classification. The allowable amounts prescribed by this paragraph may be altered by agreement of the parties.

F. Under the Board's established policy concerning retroactivity of wage adjustments, the objective standards, when agreed upon, would be applied retroactively in individual cases to May 15, 1944, subject to offsets by merit increases granted since that date. The parties may agree on any settlement of the retroactive issue reasonably related to that principle. In the event the parties do not agree, the issue shall be returned to the National War Labor Board for decision.

III. The remainder of the petition for review of the interim directive order is hereby denied.

IV. Subject to the provisions of Pars. I and II above, the terms and conditions of employment set forth in said interim directive order dated Nov. 8, 1944 [24 War Lab. Rep. 14], and directive order dated Nov. 30, 1944, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

GENERAL MOTORS CORP.—

In re General Motors Corporation (Fisher Body Pontiac Division) [Pontiac, Mich.] *and* International Union United Automobile, Aircraft and Agricultural Implement Workers of America, Local 596 (CIO). Case No. 111-4942-D, May 30, 1945 (made public Aug. 1, 1945).

Unanimous decision of Board remanding order of Regional Board XI (Detroit). Public members concurring: Lewis M. Gill, Nathan P. Feinsinger, and Dexter M. Keezer. Labor members concurring: Delmond Garst, Carl J. Shipley, and James A. Brownlow. Employer members concurring: Hoey Hennessy, Walter Knauss, and Earl Cannon.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition filed by the union for review of the Eleventh Regional War Labor Board's directive order of Mar. 31, 1945, hereby takes the following action:

The case is hereby remanded to the Eleventh Regional War Labor Board with instructions to hold a hearing on the issue of retroactivity.*

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* Ed. Note: The first Regional order in this case contained no provision on retroactivity. The Board claimed that retroactivity was not a certified issue and that no hearings had been held on this question. On Jan. 4, 1945, the union brought the question of retroactivity before the Board, and a second directive order made wage increases retroactive to date of certification of the dispute.

Both parties appealed, the union contending that the retroactive date should be 120 days prior to the date of certification and the company contending that the second Regional Board order was invalid since its first order did not provide for retroactivity. (Information supplied by WLB staff.)

HART-CARTER CO.—

In re HART-CARTER COMPANY (LAUSON DIVISION) [New Holstein, Wis.] *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL 1259 (AFL). Case No. 111-7016-D, June 27, 1945 (made public Aug. 1, 1945).

Majority decision of Board remanding order of Regional Board VI (Chicago). Public members concurring: Dexter M. Keezer and Edwin E. Witte. Employer members concurring: S. Bayard Colgate and Earl N. Cannon. Labor members dissenting: Elmer E. Walker and Delmond Garst.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 28, 1942, the National War Labor Board, having accepted the petition for review filed by the company in the above entitled case and having reviewed the merits of the case, hereby orders:

The case is hereby remanded to the Sixth Regional War Labor Board for reconsideration of its order of March 26, 1945. The Regional Board shall determine the proper bracket and apply it in this case. If additional data is required, the Regional Board shall hold a public hearing.*

HULMAN & CO.—

In re HULMAN AND COMPANY [Terre Haute, Ind.] *and* FEDERAL LABOR UNION, LOCAL 19771 (AFL). Case No. 111-9949-D, Apr. 26, 1945 (made public Aug. 1, 1945).

Majority decision of Board remanding order of Regional Board VI (Chicago). Public members concurring: Nathan P. Feinsinger, Lewis M. Gill, and Jesse Freidin. Public member dissenting on Par. I: Dexter M. Keezer. Labor members concurring: James A. Brownlow, Elmer E. Walker, Delmond Garst, and Carl J. Shipley. Employer members dissenting on Par. II: Earl Cannon, Frederick S. Fales, Charles S. Roberts, and Lee H. Hill.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having granted in part the union's petition for review of the Sixth Regional War Labor Board's directive order of Jan. 13, 1945, of the above entitled case and having reviewed the merits of the case with respect to a progression schedule, hereby takes the following action:

I. That part of the union's petition for review which relates to a progression schedule is hereby remanded to the Sixth Regional War Labor Board for reconsideration. †

II. The remainder of the petition for review is hereby denied.

III. Subject to the provisions of Par. I above, the terms and conditions of employment set forth in said directive order of Jan. 13, 1945, shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

INDIVIDUAL DRINKING CUP CO., INC.—

In re INDIVIDUAL DRINKING CUP COMPANY, INC. [Easton, Pa.] *and* UNITED PAPER CUP WORKERS (PAPER WORKERS ORGANIZING COMMITTEE), LOCAL 412 (CIO). Case No. 111-10887-D, June 20, 1945 (made public Aug. 1, 1945).

Majority decision of Board remanding order of Regional Board III

* ED. NOTE: The Regional order of Mar. 26, 1945, granted a general wage increase of 5 cents per hour to incentive workers and 10½ cents per hour to day-work employees on grounds that present rates are 11 cents below industry practice in the Green Bay area.

In its appeal the company argued that the new rates will upset the traditional differential between rural and urban communities. (Information supplied by WLB staff.)

† ED. NOTE: The Regional Board had denied the union's request to amend the present rate schedule, which provides for increases at the end of six months and a second increase to the maximum rate at the end of a year, to provide for increases at the end of three and six months, respectively. The Board remands the case in light of the fact that the Board permits unskilled workers to advance to the midpoint of a range within four months. (Information supplied by WLB staff.)

(Philadelphia). Public members concurring: Jesse Freidin, Edwin E. Witte, Lewis M. Gill, and Nathan P. Feinsinger. Employer members concurring: William Maloney, Earl Cannon, S. Bayard Colgate, and Charles S. Roberts. Labor members dissenting on acceptance of petition: Carl J. Shipley, Delmond Garst, Elmer E. Walker, and James A. Brownlow.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition filed by the company for review of the Third Regional War Labor Board's directive order No. 2 dated Mar. 23, 1945, in the above entitled case, hereby takes the following action:

The case is hereby remanded to the Third Regional War Labor Board for reconsideration of the said directive order of Mar. 23, 1945, with respect to the issue of paid holidays. *

KOPPERS CO.—

In re KOPPERS COMPANY (WOOD PRESERVING DIVISION) [Columbia Park, Ohio] *and* CREOSOTE WORKERS UNION, LOCAL 1295, LOCAL INDUSTRIAL UNION (CIO). Case No. 111-10997-D, June 16, 1945 (made public Aug. 1, 1945).

Majority decision of Board remanding order of Regional Board V (Cleveland). Public members concurring: Nathan P. Feinsinger and Edwin E. Witte. Employer members dissenting on Par. I: Earl Cannon and Horace Horton. Labor members dissenting on Par. II: Carl J. Shipley and James A. Brownlow.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, in so far as it relates to hourly rates, the petition filed by the union for review of the Fifth Regional War Labor Board's directive order of Feb. 2, 1945, and having reviewed the merits of the case with respect to this issue, hereby orders:

I. The case is hereby remanded to the Fifth Regional War Labor Board for reconsideration of Part I, Par. 3 of the said directive order of Feb. 2, 1945. †

II. That part of the union's petition for review which relates to incentive rates is denied.

III. The request for an oral hearing is denied.

IV. Subject to the provisions of Par. I above, the terms and conditions of employment set forth in the Fifth Regional War Labor Board's directive order of Feb. 2, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

KROLL BROS. CO.—

In re KROLL BROTHERS COMPANY [Chicago, Ill.] *and* UNITED FURNITURE WORKERS OF AMERICA, LOCAL 18-B (CIO). Case No. 111-10277-D, June 28, 1945 (made public Aug. 1, 1945).

Majority decision of Board amending order of Regional Board VI (Chicago). Public members concurring: Lewis M. Gill and Dexter M. Keezer. Labor members dissenting on acceptance in part of company petition and Par. I: Delmond Garst and James A. Brownlow. Employer members dissenting on Par. II: Earl N. Cannon and S. Bayard Colgate.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations is-

* ED. NOTE: The Regional Board had ordered paid holidays on the basis of practice in the paper industry. The company claimed that the paper cup industry was not comparable to the paper industry. (Information supplied by WLB staff.)

† ED. NOTE: The Regional Board denied the union's request for increases in hourly rates on the ground that most of the existing rates are not below sound and tested rates. The National Board found, however, that some of the rates were considerably below those rates paid for similar work in the area. (Information supplied by WLB staff.)

sued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted in so far as it relates to the wage reopening clause, the petition filed by the company for review of the Sixth Regional War Labor Board's directive order of Feb. 28, 1945, in the above entitled case and having reviewed the merits of the case with respect to this issue, hereby orders:

I. The terms and conditions of employment set forth in the Sixth Regional War Labor Board's directive order of Feb. 26, 1945, in this case shall govern the relations between the parties,* with the following modification:

Par. 2 of the said order is hereby vacated. The parties may reopen the question of wages in the event of a change in national wage stabilization policy.*

II. Those portions of the petition for review which relate to wages, retroactivity, and vacations are denied.

III. The request for an oral hearing is denied.

IV. The terms and conditions of employment set forth in said directive order of Feb. 26, 1945, as herein modified shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

W. L. MAXSON CORP.—

In re W. L. Maxson Corporation [New York, N. Y.] *and* United Electrical, Radio and Machine Workers of America, Local 1217 (CIO). Case No. 3253-D, Aug. 1, 1945 (made public Aug. 3, 1945).

Interpreting 25 War Lab. Rep. 308; 21 War Lab. Rep. 268.

Letter of Interpretation

After due consideration of all the evidence and arguments presented by the parties at the public hearing before the National War Labor Board on July 31, 1945, the Board adopted the following interpretation of its directive orders [21 War Lab. Rep. 268; 25 War Lab. Rep. 308] in this case:

"The first sentence of Par. C of the National War Labor Board's order of Dec. 15, 1944 [21 War Lab. Rep. 268], is interpreted to mean that employees on the payroll as of Aug. 23, 1943, shall be entitled as of Aug. 23, 1943, to the rates they would have received if the rates and learnership progression schedule ordered by the Board had been in effect from the date they were hired. For example, an employee hired 6 weeks before Aug. 23, 1943 at 55 cents an hour is entitled to 65 cents an hour as of Aug. 23, 1943. He is not, however, entitled to any back pay for the period before Aug. 23, 1943."

The company is expected to effectuate the directive orders of the Board in accordance with the above interpretation and to notify the Board on or before Aug. 6, 1945, of its intention to do so.

METROPOLITAN LIFE INS. CO.—

In re Metropolitan Life Insurance Company (Maryland Agents) *and* Federation of Industrial and Ordinary Insurance Agents Council, Locals 23322 and 23345 (AFL). Case No. 111-14499-JB, June 4, 1945 (made public Aug. 1, 1945).

Majority decision of Board. Public members concurring: Lewis M. Gill and Dexter M. Keezer. Labor members concurring: Raymond McCall and Delmond Garst. Employer members dissenting: Earl Cannon and Lee H. Hill.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby decides the disptue between the parties and orders that the following terms and conditions of em-

* Ed. Note: The Regional order directed a general wage increase of 10 cents per hour for all employees in the bargaining unit with the provision that "either party may reopen the issue of wages once during the life of the contract upon giving thirty (30) days' notice in writing to the other party."

In its appeal the company contended that its wage rates were already above the Little Steel formula and that industry practice provided no foundation for such a wage reopening clause. (Information supplied by WLB staff.)

ployment shall govern the relations between the parties:

The increase of $2.85 per week, granted by the company and agreed to by the union, shall be retroactive to Dec. 8, 1943.*

The procedure to be followed in making the retroactive payment to those employees who have either quit or been discharged shall be in accordance with the Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

POTASH CO. OF AMERICA—

In re POTASH COMPANY OF AMERICA [Carlsbad, N. M.] *and* INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS for itself and on behalf of its CARLSBAD POTASH WORKERS, LOCAL 415 (CIO). Case No. 111-8946-D, Apr. 10, 1945 (made public Aug. 1, 1945).

Amending 19 War Lab. Rep. 406.

Majority decision of Board amending order of Non-Ferrous Metals Commission. Public members concurring: George W. Taylor, Edwin E. Witte, Lewis M. Gill, and Lloyd K. Garrison. Employer members dissenting on Pars. II and IV: Charles S. Roberts, Clarence O. Skinner, Vincent P. Ahearn and Frederick S. Fales. Labor members dissenting on Par. III: Van A. Bittner, Carl J. Shipley, James A. Brownlow, and Robert J. Watt.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1945, the National War Labor Board, having considered the petitions for review filed by the parties to the above entitled case and having accepted in part the company's petition and reviewed the merits of the case with respect to the reopening clause, hereby decides the dispute between the parties and orders:

I. The terms and conditions of employment set forth in the Non-Ferrous Metals Commission's directive order of Oct. 20, 1944 [19 War Lab. Rep. 406], in this case shall govern the relations between the parties, with the following modification:

A. Part I, Sec. A(3) is hereby amended to read as follows:

"The contract between the parties shall provide that, in the event of a change in the national wage stabilization policy during the life of the contract, either party may, upon 30 days' written notice to the other, open the contract as to the general wage scale provided that such reopening shall in no event affect the wage scales prior to Nov. 30, 1944."

II. The remainder of the company's petition for review is hereby denied.

III. The petition filed by the union is hereby denied.

IV. The request for an oral hearing is hereby denied.

V. The terms and conditions of employment set forth in said directive order of Oct. 25, 1944, as herein modified shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

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* ED. NOTE: Following the Third Regional Board's denial of the union's request for an increase in commission rates for its agents at 15 War Lab. Rep. 593, the National Board upheld an increase of $2.85 per week for New York agents granted by the Second Regional Board retroactive to date of certification of the dispute in a similar question involving the same company. The National Board also ordered these increases for the company's agents in New Jersey, Pennsylvania, Michigan, Connecticut, and Illinois. In these cases the union reserved the right to "seek from the National Board a directive that said weekly payments shall be made effective from some prior date."

The union requested Dec. 8, 1943, the date of certification of Case No. 5304-D (15 War Lab. Rep. 593), as the retroactive date for these increases. The company objected to retroactivity on grounds that retroactive pay contravenes the New York State Insurance Act and that the Third Regional Board's order denying the increases eliminated the question of retroactivity.

The hearing officer stated that the insurance law does not forbid payment of retroactive wage increases. This question is now before the New York courts. The company has agreed to make the payments if the courts find that retroactivity is permitted by the Act. The union has agreed not to seek enforcement until the ruling of the court is known. (Information supplied by WLB staff.)

SWIFT & CO.—

In re SWIFT & COMPANY (Subsidiary of Swift & Co., Chicago, Ill.) [Spencer, Iowa] *and* AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 152 (AFL). Case No. 111-10230-D, June 27, 1945 (made public Aug. 1, 1945).

Unanimous decision of Board amending order of Regional Board VII (Kansas City). Public members concurring: Edwin E. Witte and Dexter M. Keezer. Employer members concurring: Earl Cannon and S. Bayard Colgate. Labor members concurring: Elmer E. Walker and Delmond Garst.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition filed by the company for review of the directive order dated Apr. 4, 1945, of the Regional War Labor Board for the Seventh Region in the above entitled case and having reviewed the merits of the case, hereby decides the dispute between the parties and orders:

I. Night-Shift Premium. Par. 3 of the said directive order is hereby modified to provide that the shift premium be paid only for work on night shifts. Night shifts shall be defined to include work scheduled to be done between 6 p.m. and 6 a.m.*

II. Subject to the provisions above, the terms and conditions of employment set forth in said directive order dated Apr. 4, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

* ED. NOTE: The Regional order directed a five-cent premium for all hours worked between 6 p. m. and 6 a. m.

The company, a poultry and egg-packing house, contended that only one shift was involved in its work and that industry and area practice do not support such a premium. (Information supplied by WLB staff.)

UNION MACHINERY CO.—

In re UNION MACHINERY COMPANY [Joliet, Ill.] *and* UNITED STEELWORKERS OF AMERICA, LOCAL 2703 (CIO). Case No. 111-3171-HO, June 14, 1945 (made public Aug. 1, 1945).

Majority decision of Board remanding order of Regional Board VI (Chicago). Public members concurring: Lewis M. Gill and Dexter M. Keezer. Labor members dissenting on Par. I: Carl J. Shipley and Robert J. Watt. Employer members dissenting on Par. II; Clarence O. Skinner and J. Holmes Davis.

Directive Order No. II

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having granted in part the petition filed by the company for review of the supplemental directive order dated Dec. 23, 1944, of the Regional War Labor Board for the Sixth Region and having reviewed the merits of the case in so far as they relate to rates for janitors, hereby decides the dispute between the parties and orders:

I. Rates for Janitors

The said directive order with respect to this issue is hereby remanded to the Regional Board for reconsideration on the merits of the case.†

II. The remainder of the petition for review is hereby denied.

† ED. NOTE: The Regional Board ordered the company to pay janitors 78 cents an hour which represents an increase of 13 cents an hour. Its order was based on a finding that steel companies in the area paid the 78-cent rate. The company claimed, however, that, as a manufacturer of bakery machinery and machine parts for the Army and Navy, it was not part of the steel industry but of the metalworking industry in which the rate paid for janitors was 65 cents. (Information supplied by WLB staff.)

UNIVERSAL-CYCLOPS STEEL CORP.—

In re UNIVERSAL-CYCLOPS STEEL CORPORATION [Bridgeville, Pa.] *and* UNITED STEELWORKERS OF AMERICA, LOCAL 178 (CIO). Case No. 111-6230-D (14-374), Apr. 26, 1945 (made public Aug. 1, 1945).

Clarifying 19 War Lab. Rep. 568.

Majority decision of Board clarifying prior order. Public members concurring: Lewis M. Gill, Jesse Freidin, Dexter M. Keezer, and Nathan P. Feinsinger. Labor members dissenting on vacations and correction of inequalities: Delmond Garst, Carl J. Shipley, James A. Brownlow, and Elmer E. Walker. Employer members dissenting on night-shift bonus: Lee H. Hill, Earl Cannon, Charles S. Roberts, and Frederick S. Fales.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby decides the dispute between the parties and orders:

The terms of the contract between the parties, in so far as they provide for effectuation of pay changes, do not apply to retroactive payments for vacations and correction of inequalities ordered by the Board in Case No. 111-6230-D [19 War Lab. Rep. 568]. The contract provisions do, however, apply to the retroactivity of the ordered night-shift bonus, which shall be effective as of Jan. 4, 1944.

The procedure to be followed in making the retroactive payment to those employees who have either quit or been discharged shall be in accordance with the Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

Action of National War Labor Board and Subsidiary Agencies on Wage Agreements

CHRYSLER CORP.—

Decision of National Board

In re CHRYSLER CORPORATION [Detroit, Mich.] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCALS 3, 7, 47, 51, 140, 227, 371, 375, 490, 230, 685, 705, 833, and 946 (CIO). Case No. 3950-CS-D, June 5, 1945 (made public July 25, 1945).

Order of Approval

By virtue of and pursuant to the powers vested in it by the Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby approves the apprentice agreement and the up-grading agreement of Aug. 3, 1944, entered into by the parties, arrived at pursuant to the Board's directive order of Aug. 23, 1943 [10 War Lab. Rep. 551], which was submitted to the Board in the report of the Special Representative, Mr. David A. Wolff, dated Apr. 13, 1945. The parties are hereby authorized to put the terms of those agreements into effect.

Background Facts—WLB Press Release B-2169: Employees involved—approximately 60,000.

The apprentice plan and up-grading program contain the following provisions:

"Apprentices are to be paid for attending classes at their regular hourly rates, beginning at 60 cents an hour, with an automatic wage increase of five cents an hour at six-month intervals or 912 hours of applied training.

"Upon graduation the apprentice is to be paid for all the tools he was required to buy which are then in his possession and also paid a cash bonus. The total amount of the bonus and tool reimbursement is not to exceed $200 for a four-year term and $150 for a three-year term."

The up-grading program provides that "where the minimum rate of the skilled trade to which the employee is upgraded is not more than ten cents above the rate he is earning, he will be advanced to such minimum rate upon transfer, but where there is more than a ten-cent differential, the employee will be advanced ten cents over the rate he had been earning and will be stepped up not less than five cents each thirty days, if retained, until he reaches the minimum rate which was in existence prior to the increase ordered by the Board's directive dated Oct. 16, 1942, for the job classification.

"Thereafter the upgrader will be advanced five cents each sixty days, if retained, until he reaches the new minimum ordered by the Board's directive dated Oct. 16, 1942, for the job classification. Any odd cents less than five cents will be added to the last five-cent increase in order to bring the employee up to the minimum of the classification. Any increase above the minimum will be on the basis of merit."

The October 1942 order appearing at 4 War Lab. Rep. 33 and 220 established stabilized rates for the tool and die industry.

CONTINENTAL MOTORS CORP.—

Decision of National Board

In re CONTINENTAL MOTORS CORPORATION [Muskegon, Mich.] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 113 (CIO). Cases No. 11-12056 and 11-12049, May 15, 1945. (made public Aug. 8, 1945).

Ruling

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, the National War Labor Board, having accepted the petitions for review filed by the parties to the above entitled case, hereby takes the following action:

The rulings entered on Nov. 9, 1944, by the Regional War Labor Board for the Eleventh Region are hereby set aside and the proposed incentive plan is approved with the following modifications:

1. The monthly standard of performance shall be amended so that the dollar volume times .045 plus 30,500 manhours shall represent standard manhours for the month upon which the bonus shall be computed.

2. Overtime hours as well as straight-time hours shall be included in determining the total of nonproductive manhours expended in any one month.

3. The plant-housekeeping bonus shall be eliminated from the plan.

4. Determination of dollar volume of shipments for any month shall be made when products have been tested and are ready for shipment whether shipped or not shipped during the bonus period.

5. The bonus shall be computed on a quarterly or three-month basis. No current bonus payment shall be made during the first three months of the plan. Thereafter, deferred payments shall be made on a biweekly basis with a three-month lag between performance and payment. Thus, the first biweekly payment will represent a pro-rated (two-week) share of the bonus earned in the first three-month period.

6. The present pricing formula used by the company shall remain unchanged for the purpose of computing the sales dollar. However, if any price change occurs because of a change in costs or selling price which exceeds one per cent in either direction, the bonus formula shall be adjusted so as to eliminate the entire amount of the increase.

In regard to subcontracting, if any change occurs which results in a bonus increase or descrease of one per cent or more, the formula shall be adjusted to compensate fully for such change.

7. The nonproductive hourly-rated foreman of Department 82-A shall be paid the same percentage bonus earned by the nonproductive employees represented by Local No. 113 of the UAW-CIO, provided that the ratio of their manhours to the manhours worked by the remainder of the nonproductive departments does not exceed six per cent. If the ratio should exceed the six per cent figure in any one month, the bonus to these foremen must be reduced in direct proportion to the increase in the ratio above six per cent.

8. The parties shall submit quarterly reports to the Board giving complete details of the operation of the plan.

Background Facts—WLB Press Release B-2187: Employees involved—approximately 2,500 nonproduction, hourly-rated employees represented by the union and 215 nonproduction supervisory and service employees who are not union members. Total plant employment is 9,200.

The company manufactures automotive and aircraft engines.

The agreement, based on performance standards for the past five years, was originally denied by the Detroit Regional Board on grounds of contravention of industry and area practice and stabilization policy.

National Board modifications of objectionable points in the plan included substitution of .049 instead of .045 as a multiplying figure and adding 30,500 hours. "The fraction .045 represents the standard number of hours worked per dollar of sales, and 30,500 represents the number of hours required per month for nonproductive work. The efficiency of the

nonproductive group is calculated by dividing the actual number of hours worked by this group into the monthly standard hours. (The Board modified the parties' proposal to use a multiplying figure of .049 and to count only straight-time hours in computing the number of hours worked. The Board found that the .045 multiplying figure, if used for the 6-month period from December 1943 to May 1944, would have resulted in a percentage efficiency figure of 81.2 per cent, almost coinciding with the plant's operating efficiency for that period of 80 per cent."

Other modifications from the computation of efficiency 8,715 scheduled overtime hours worked a month by nonproduction workers and unscheduled overtime hours. These changes will allow bonuses to increase while manhour-productivity declines. Bonuses are based on percentage efficiency above 100 per cent.

The plant-housekeeping bonus was eliminated in accordance with Board policy.

The plan "provided for additional premiums for nonproduction workers. A 'task committee' was to inspect the plant every month and assign a rating on 'plant-housekeeping.' An 'excellent' rating would carry a bonus of five per cent, 'good' rating—two per cent, 'fair' rating—nothing, and 'poor' rating—minus two per cent. The proposal would grant extra compensation for what ordinarily is required of all employees in any well managed plant and was not related to any definite standard."

In determining dollar volume, instead of using the dollar volume of actual shipments, "this provision eliminates the possibility that workers will be penalized by heavy increases in inventories, should production outstrip sales."

Computation of the bonus on a quarterly basis "would minimize fluctuations in incentive earnings from pay period to pay period."

The Board modified the company's pricing formula "so as to provide for elimination of any bonus increase resulting from a change in price exceeding one per cent and for adjustment of the formula to compensate fully for any change in subcontracting which results in a bonus increase or decrease of one per cent or more."

LUGGAGE & LEATHER GOODS MFRS. ASSN. OF NEW YORK—

Decision of National Board

In re LUGGAGE AND LEATHER GOODS MANUFACTURERS ASSOCIATION OF NEW YORK [New York, N. Y.] *and* SUITCASE, BAG AND PORTFOLIO MAKERS' UNION (AFL). Case No. 2-26153, June 4, 1945 (made public Aug. 1, 1945).

Ruling

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petition filed in the above entitled case for review of the ruling dated Dec. 1, 1944, of the Regional War Labor Board for the Second Region hereby takes the following action:

The said petition for review is hereby denied, and the said ruling of Dec. 1, 1944, is hereby affirmed and adopted as the ruling of the National War Labor Board.

Background Facts—WLB Press Release B-2177: Employees involved—approximately 800.

The agreement provided for the establishment of an employment stabilization fund as an alternative to a five per cent general wage increase previously denied by the New York Regional Board. Provisions for adminstering the fund were that:

"(1) The employers make weekly payments equal to five per cent of the payroll into the fund; (2) The fund be held by a named trustee who is to convert the money into government bonds; (3) These bonds be not made available to the employees until six months after the war or until some other date set by the Board; and (4) No employee shall have the right or power to assign, dispose of, or realize any money on the bonds or cash standing to his credit."

The Board held that this plan represented a deferred wage payment and was not in conformance with stabilization policy.

NEW BEDFORD COTTON MFRS. ASSN. ET AL.—

Decision of Regional Board I (Boston)

In re NEW BEDFORD COTTON MANUFACTURERS ASSOCIATION, UNITED STATES RUBBER COMPANY (FISK CORD MILL) AND HOOSAC MILLS CORPORATION [New Bedford, Mass.] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (AFL). Cases No. I-5543, I-37530 and I-36663, July 13, 1945.

General increase of five cents per hour approved for yardmen in New Bedford Cotton Mills.

Background Facts Supplied by WLB Staff: The agreement grants an increase of five cents per hour to yardmen. Approval was based on the fact that yardmen have always received increases when production workers received them. Production workers received a five-cent general increase in accordance with the National Board order in the Twenty-Five Northern Cotton and Rayon Mills case at 21 War Lab. Rep. 820.

In a public-industry opinion on this approval, however, the Board explains this in-

crease was granted on the basis of intra-plant inequity, and that this principle should take precedence over inter-plant relationships on the basis of which a 2½-cent increase was granted the yardmen in February 1943. "* * * the Board cannot risk the creation of gross inequities between the production workers and these yard workers by approving successive adjustments on both these principles."

PROXIMITY PRINT WORKS—

Decision of Southern Textile Commission (Atlanta)

In re PROXIMITY PRINT WORKS [Greensboro, N. C.] *and* TEXTILE WORKERS UNION OF AMERICA (CIO). Case No. 111-10942-D, July 2, 1945 (made public July 17, 1945).

Directive Order

I. The Southern Textile Commission acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby approves the agreement between the parties, dated June 9, 1945, and recommends that such agreement be put into effect retroactively to June 25, 1945.

II. This order shall stand confirmed as the Order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 14 days from the mailing date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

III. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect; and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

IV. As required by Executive Orders No. 9250 and 9328, as supplemented by the directive of May 12, 1943, Par. I of this order shall in any event become effective only upon determination by the Office of Price Administration that the wage increase ordered in that paragraph will not require any change in price ceilings or, if no such determination is made, then upon approval by the Director of Economic Stabilization. The parties will be properly notified of such action.

The Commission which issued this order consisted of the following members: Mr. Richard A. Lester, public member; Mr. William Pollock, labor member; and Mr. C. L. Stevens, industry member. Mr. Stevens dissented except on the recommendation regarding retroactivity under I.

Background Facts Supplied by WLB Staff: The company is a cotton textile finisher and converter combined, doing more complicated work than the average finishing plant. It is part of the Cone group which owns three large cotton mills in the same locality.

The agreement provides a wage increase of five cents across the board, a five-cent differential for the third shift, a 55-cent minimum wage, and intra-plant wage adjustments averaging 4.57 cents per hour.

Jan. 1, 1945, was agreed upon as the retroactive date for the first three items and July 9, 1945, or the date of the Atlanta Regional Board's approval of the agreement as the date of the last provision, depending on which occurred first. The Regional Board approved the first three and referred the fourth to the Southern Textile Commission.

The Commission approved the proposed scale under Sec. 3 of the Feb. 20, 1945, order of the National Board in the 23 Southern Textile Cos. case at 21 War Lab. Rep. 793, on grounds that (1) the increases are varied and not general across-the-board increases, (2) the proposed scale is "a more balanced and properly aligned wage rate structure" than the one it is to replace, (3) the increases are well within the limitation of an average of 5 cents per hour for all the company's employees covered by the Board's Feb. 20, 1945, order, (4) the proposed wage structure is based at the bottom on the guide post for common labor (covering 50 of the 359 employees in the bargaining unit), and there is no evidence that the top mechanical jobs are at a level above what they should be in comparison with the guide-post rate for loom-fixer, and (5) the proposed scale is approximately in the middle of the scales for comparable finishing mills.

In another order issued at the same time, the Commission extended the agreement to 36 employees not represented by the union.

CORRECTION

Readers are asked to make the following correction in the headnote on Arbitration in the Boeing Airplane Co.

case appearing at 26 War Lab. Rep. 50: The last sentence of the headnote should be deleted.

The Board's decision in the case was unanimous; the third sentence of the headnote erroneously attributed to the industry members of the Board the dissenting position of the industry representative on the National Airframe Panel. The correction will be made in the bound volume of 26 War Labor Reports.

Going Wage Rates of Region II (New York)

The going wage rates appearing below for this region are new, supplementary determinations issued by the New York Regional Board since publication of previous compilations of rates at 13 War Lab. Rep. W-1—Feb. 9, 1944 (MANUAL OF GOING WAGE RATES, p. 45); *16 War Lab. Rep. W-6—June 7, 1944; 16 War Lab. Rep. W-1—July 5, 1944; 16 War Lab. Rep. W-1—July 12, 1944; 17 War Lab. Rep. W-1—Aug. 2, 1944; 18 War Lab. Rep. W-1—Sept. 6, 1944; 18 War Lab. Rep. W-1—Sept. 20, 1944; 18 War Lab. Rep. W-1—Oct. 4, 1944; 18 War Lab. Rep. W-1—Oct. 11, 1944; 19 War Lab. Rep. W-4—Nov. 1, 1944; 19 War Lab. Rep. W-1—Nov. 8, 1944; 20 War Lab. Rep. W-5—Dec. 27, 1944; 21 War Lab. Rep. W-1—Jan. 17, 1945; 24 War Lab. Rep W-4—May 16, 1945; 24 War Lab Rep. W-1—June 13, 1945; 25 War Lab. Rep. W-1— July 11, 1945.*

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METROPOLITAN NEW YORK LABOR MARKET AREA *

Radio Broadcasting Technicians

1. Going Wage Rates

Period of Service	Rate Per 40-Hour Week
Starting rate	$47.50
After three months	50.00
After six months	52.50
After one year	55.00
After one and one-half years	57.50
After two years	60.00
After two and one-half years	62.50
After three years	$65.00
After three and one-half years	67.50
After four years	70.00
After four and one-half years	72.50
After five years	75.00

* These rates apply to the New York City-Northern New Jersey Metropolitan Area, defined as: New York City, Nassau, Suffolk, Westchester, Putnam, Essex, Hudson, Union, Passaic and Bergen Counties and the northeast corner of Warren Township in Somerset County, Middlesex County north of Piscataway and west of South Plainfield, Morris County northeast of Kinnelon and Lincoln Park.

2. Job Description

The duties include all work in connection with the installation (except new construction work), operation and maintenance of any transmitting, receiving, control, input, or other electrical equipment which is used in the radio broadcasting of audio, video, facsimile, and/or for other transmission or reception or for such other work as may be involved in the proper functioning of the technical department of the company.

NEW YORK CITY LABOR MARKET AREA

Women's Blouse Industry *

Job Classification	Rate Per Week	Range Min.	Range Max.
Operators	$41.25	$37.00	$46.00
Pressers	37.80	33.00	42.00
Finishers	32.50	29.00	36.00
Floor Help	29.00	26.00	32.00

* These rates apply to time workers.

Going Wage Rates of Region III (Philadelphia)

The going wage rates appearing below for this region are new, supplementary determinations issued by the Philadelphia Regional Board since publication of previous compilations of rates at 14 War Lab. Rep. 33—Feb. 16, 1944 (MANUAL OF GOING WAGE RATES, p. 111); *15 War Lab. Rep. W-19—May 24, 1944; 16 War Lab. Rep. W-5—July 5, 1944; 16 War Lab. Rep. W-21—July 12, 1944; 18 War Lab. Rep. W-6—Sept. 20, 1944; 19 War Lab. Rep. W-3—Nov. 8, 1944; 20 War Lab. Rep. W-7—Dec. 27, 1944; 24 War Lab. Rep. W-3—June 13, 1945; 25 War Lab. Rep W-1—June 27, 1945; 25 War Lab. Rep. W-4—July 11, 1945; 26 War Lab. Rep. W-1—Aug. 8, 1945.*

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BALTIMORE, MD., METAL TRADES INDUSTRIES [1]

Job Classification	Rate Per Hour
Assembler	
A	$0.95
B	.85
C	.70
Burner [2]	.65
Coremaker, Hand, Floor, and Bench [3]	
A	1.05
B	.87
Craneman, Machine Shop	.90
Craneman [2]	.675
Cupola Tender [4]	.75
Die Setter, A [5]	1.00
Drill Press Operator, Radial	
A	.95
B	.85
Drill Press Operator, Single Spindle	
A	.90
B	.80
C	.70
Engine Lathe Operator	
A	1.05
B	.90
C	.75
Fitter	
A	$1.05
B	.95
C	.75
Furnace Tender [6]	.75
Gear Cutter	
A	1.05
B	.90
C	.75
Grinding Machine Operator [7]	
A	1.05
B	.90
C	.75
Labor [2]	.575
Labor, Common [3]	.65
Labor, Common [8]	.65
Layout	1.05
Machinists	
A	1.10
B	.95
Milling Machine Operator	
A	1.05
B	.90
C	.75
Molders, Hand, Floor and Bench [3]	
A	1.05
B	.87
Patternmaker, Wood [3]	
A	1.12
Planer Operator	
A	1.05
B	.90
C	.75
Power and Punch Press Operator	
A	.90
B	.80
C	.70
Pressman	.65
Shakeout [3]	.70
Shearman [2]	.65
Toolmaker	
A	1.30
B	1.05
Truck Driver [9]	
Turret Lathe Operator	
A	1.05
B	.90
C	.75
Welder, Hand	
A	1.00
B	.85

1 ED. NOTE: The rates below supersede, as far as they apply to ferrous and non-ferrous foundries, those previously published for that industry at 14 War Lab. Rep. W-37—Feb. 16, 1944 (MANUAL OF GOING WAGE RATES, p. 116.)

2 Scrap yards.

3 Ferrous and non-ferrous foundries.

4 Ferrous.

5 Power and punch press.

6 Non-ferrous.

7 Except rough grinding.

8 Metal working plants.

9 Former rate revoked and no new rate set.

MERCER, LAWRENCE, AND BUTLER COUNTIES, PA.,

LABOR MARKET AREA

Metal Trades Industries [1]

Job Classification	Rate Per Hour
Assembler	
A	$1.05
B	.95
C	.80
Coremaker, Hand, Floor, and Bench [2]	
A	1.10
B	.92
Cupola Tender [3]	.96
Drill Press Operator, Single Spindle	
A	1.00
B	.90
C	.75
Engine Lathe Operator	
A	1.05
B	.95
C	.80
Furnace Tender [4]	.96
Gear Cutter	
A	1.05
B	.95
C	.80
Grinder [2]	1.05
Grinding Machine Operator [5]	
A	1.05
B	.95
C	.80
Labor, Common [2]	.68
Labor, Common [6]	.68
Layout	1.05
Machine Molder [2]	
A	1.05
B	.88
Machinist	
A	1.10
B	.90
Milling Machine Operator	
A	1.05
B	.95
C	.80
Molder, Hand, Floor and Bench [2]	
A	1.10
B	.92
Patternmaker, Wood A [2]	1.25
Planer Operator	
A	1.05
B	.95
C	.80
Shakeout [2]	.76
Toolmaker	
A	$1.17
B	1.05
Truck Driver [7]	
Turret Lathe Operator	
A	1.05
B	.95
C	.80

[1] Ed. Note: The rates below supersede those for ferrous and non-ferrous foundries previously published for this area at 14 War Lab. Rep. W-38—Feb. 16, 1944 (Manual of Going Wage Rates, p. 117.)
[2] Ferrous and non-ferrous foundries.
[3] Ferrous.
[4] Non-ferrous.
[5] Except rough grinding.
[6] Metal working plants.
[7] Former rate revoked and no new rate set.

PHILADELPHIA, PA.

LABOR MARKET AREA

Woolens and Worsteds *

Job Classification	Rate Per Hour
Loomfixer, Automatic	$1.21
Weaver, Automatic (6 Looms)	1.08†
Warper	1.05
Percher	.85
Winder	.60

* Ed. Note: The rates below supersede in part those previously published for this industry at 14 War. Lab. Rep. W-41—Feb. 16, 1944 (Manual of Going Wage Rates, p. 120.)
† Piece work, average hourly earnings.

PITTSBURGH, PA.,

LABOR MARKET AREA

Metal Trades Industries [1]

Job Classification	Rate Per Hour
Assembler	
A	$1.05
B	.95
C	.80
D	.70
Automatic Screw Machine Operator	
A	1.05
B	.95
Boring Mill Operator	
A	1.10
B	1.00
Burner [2]	.75
Chipper [3]	.86
Coremaker, Hand, Floor and Bench [3]	
A	1.21
B	.97
Craneman, Machine Shop [4]	
A	.94
B	.87
Craneman [2]	.80
Cupola Tender [5]	1.06

[1] The rates below supersede those previously published for ferrous and non-ferrous foundries at 14 War Lab. Rep W-41—Feb. 16, 1944, and for scrap yards at 14 War Lab. Rep. W-42—Feb. 16, 1944 (Manual of Going Wage Rates, pp. 120 and 121, respectively.)
[2] Scrap yards.
[3] Ferrous and non-ferrous foundries.
[4] Metal working plants.
[5] Ferrous.

PITTSBURGH, PA.,

LABOR MARKET AREA—Contd.

Metal Trades Industries—Contd.

Job Classification	Rate Per Hour
Die Setter, A [6]	$1.00
Drill Press Operator, Radial	
A	1.00
B	.90
Drill Press Operator, Single Spindle	
A	.95
B	.85
C	.75
Engine Lathe Operator	
A	1.05
B	.95
C	.80
Furnace Tender [7]	.94
Gear Cutter	
A	1.05
B	.95
C	.80
Grinder [3]	.86
Grinding Machine Operator [8]	
A	1.05
B	.95
C	.80
Labor [2]	.55
Labor, Common [3]	.78
Labor, Common [4]	.70
Layout	1.10
Machine Molder [3]	
A	1.16
B	.92
Machinist	
A	1.15
B	.95
Milling Machine Operator	
A	1.05
B	.95
C	.80
Molder, Hand, Floor, and Bench [3]	
A	1.21
B	.97
Patternmaker, Wood [3] A	1.30
Planer Operator	
A	1.05
B	.95
C	.80
Power and Punch Press Oper.	
A	.90
B	.80
C	.70
Set-Up [9]	1.15
Shakeout [3]	.82
Shearman [2]	.65
Toolmaker	
A	1.25
B	1.05
Truck Driver [10]	
Turret Lathe Operator	
A	$1.05
B	.95
C	.80
Welder, Hand	
A	$1.05
B	.90

6 Power and punch press.
7 Non-ferrous.
8 Except rough grinding.
9 For six machining operations.
10 Former rate revoked and no rate set.

WESTMORELAND COUNTY, PA.,

LABOR MARKET AREA [1]

Metal Trade Industries [2]

Job Classification	Rate per Hour
Assembler	
A	$1.05
B	.95
C	.80
Automatic Screw Machine Operator	
A	1.10
B	.95
Boring Mill Operator	
A	1.10
B	1.00
Chipper [3]	.82
Coremaker, Hand, Floor and Bench [3]	
A	1.19
B	.93
Craneman, Machine Shop [4]	
A	.94
B	.87
Cupola Tender [5]	1.02
Die Setter A [6]	1.00
Drill Press Operator, Radial	
A	1.00
B	.90
Drill Press Operator, Single Spindle	
A	.95
B	.85
C	.75
Engine Lathe Operator	
A	1.05
B	.95
C	.80
Furnace Tender [7]	.90
Gear Cutter	
A	1.05
B	.95
C	.80
Grinder [3]	.82
Grinding Machine Operator [8]	
A	1.05
B	.95
C	.80

1 Outside Pittsburgh WMC Area.
2 Ed. Note: The rates below supersede the rates for this industry previously published at 18 War Lab. Rep. W-6—Sept. 20, 1944.
3 Ferrous and non-ferrous foundries.
4 Metal working plants.
5 Ferrous.
6 Power and punch press.
7 Non-ferrous.
8 Except rough grinding.

WESTMORELAND COUNTY, PA., LABOR MARKET AREA—Contd.
Metal Trade Industries—Contd.

Job Classification	Rate Per Hour
Labor, Common [3]	$ .74
Labor Common [4]	.70
Layout	1.10
Machine Molder [3]	
A	1.14
B	.88
Machinist	
A	1.15
B	.95
Milling Machine Operator	
A	1.05
B	.95
C	.80
Molder, Hand, Floor and Bench [3]	
A	1.19
B	.93
Patternmaker, Wood, A [3]	1.25
Planer Operator	
A	1.05
B	.95
C	.80
Power and Punch Press Operator	
A	$ .90
B	.80
C	.70
Set-Up [9]	1.15
Shakeout [3]	.78
Toolmaker	
A	1.25
B	1.05
Truck Driver [10]	
Turret Lathe Operator	
A	1.05
B	.95
C	.80
Welder, hand	
A	1.05
B	.90

[9] For six machining operations.
[10] Former rate revoked and no new rate set.

CURTISS-WRIGHT CORP.—

Decision of National Board

In re Curtiss-Wright Corporation, Airplane Div. [Buffalo, N. Y.] *and* International Association of Machinists, District Lodge 585 (AFL). Case No. 111-6193-D, July 6, 1945 (made public Aug. 7, 1945).

WAGES—GOING WAGE RATES—Denial of adjustment

Union's requests for general wage increase and for increase to compensate for alleged inequalities caused by discontinuance of incentive bonus are denied since (1) existing rates are among highest in area; (2) prior increases since Jan. 1, 1941, have exceeded 15 per cent, and (3) job rate adjustments previously directed by Board adequately compensate for discontinuance of bonus.

For other rulings see Index-Digest 250.205, 15.800, and 245.340 in this or other volumes.

WAGE DIFFERENTIALS—Differential between maintenance and construction rates

Union's request that maintenance rates be increased in line with rates paid by company's subcontractors to construction employees is denied since (1) rates paid to construction workers are generally higher than rates paid in industry in general and (2) requested adjustments would create inequalities in plant's existing job classification system.

For other rulings see Index-Digest 235.180, 265.300, and 250.052 in this or other volumes.

JOB CLASSIFICATIONS — Cafeteria employees—Adjustment of classifications

Airframe company and union should evaluate cafeteria jobs and place them within labor grades which are now applied to production and maintenance work. Company's main competitor in area has slotted its cafeteria jobs into its factory labor grades, and similar slotting in instant case should eliminate whatever intra-plant inequities now exist in instant company.

For other rulings see Index-Digest 75.050 and 265.135 in this or other volumes.

WAGE ADJUSTMENTS — Retroactive date—Issue not raised at beginning of negotiations

Wage adjustments which result from directed reclassification of cafeteria jobs should be retroactive only to date of panel hearing. Panel recommended no retroactivity on ground that, prior to hearing, union had made only generalized and unapprovable wage demands and had not requested any adjustment of cafeteria jobs as such.

For other rulings see Index-Digest 225.379 in this or other volumes.

Majority decision of Board amending recommendations of National Airframe Panel. Public members concurring: Lewis M. Gill, Edwin E. Witte, and Nathan P. Feinsinger. Labor members dissenting on Pars. 1, 2, and 3: James A. Brownlow, Robert J. Watt, and Carl J. Shipley. Employer members dissenting on Pars. 4 and 5: S. Bayard Colgate, Earl Cannon, and Clair Cullinbine.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1943, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 23, 1943, the National War Labor Board hereby decides the dispute between the parties and directs that the following terms and conditions shall govern the relations between the parties:

1. The union's request for increases in the minimum and maximum rates is denied.

2. The union's request for increases to remove alleged inequalities created by the elimination of the bonus system in July 1943, is denied.

3. The union's request for increases in rates for maintenance workers is denied.

4. The parties are directed to evaluate the cafeteria jobs and to place them within the appropriate labor grades. After a period of thirty (30) days, the parties are directed to report to the Board with regard to the results of their negotiations.

5. The evaluation of the cafeteria jobs shall be effective as of Jan. 17, 1945.*

The precedure to be followed in making retroactive payment to those employees who have either quit or been discharged shall be in accordance with the National War Labor Board's resolution of Apr. 8, 1943 [26 War Lab. Rep. 3].

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* Ed. Note: The awarded retroactive date is the date of the panel hearing in this case. (Information supplied by WLB staff.)

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Report and Recommendations of the National Airframe Panel

Jan. 17, 1945

BACKGROUND

This case involves production, maintenance, and cafeteria employees of the Buffalo, N. Y. plants of the Airplane division of the Curtiss-Wright Corporation. Approximately 40,000 employees, represented by the Aircraft Industrial Lodge No. 585 of the International Association of Machinists (AFL), are included in the case.

The controversy involves wage questions only and was certified to the Board by the Secretary of Labor on Jan. 25, 1944. Because of the fact that no final disposition had been made in Case No. 2945-CS-D (816) [9 War Lab. Rep. 785, 15 War Lab. Rep. 750] of the parties' agreement to eliminate the simple and intermediate codes, the union requested several postponements. It was the position of the union that certain issues involved in the instant case would be eliminated if the agreement between the parties to eliminate the simple and intermediate codes was approved by the Board and the Director of Economic Stabilization. The union's requests for postponement were granted, and the hearing before the National Airframe Panel was not held until Jan. 17, 1945.

Art. XXX of the collective bargaining agreement between the parties, dated as of Jan. 7, 1944, provides as follows:

"The foregoing agreement does not contain any provisions covering the cost items set forth below for the reason that the parties have not been able to agree thereon at the present time. These matters are being submitted to the National War Labor Board for determination. Pending such determination, the present wage rates shall continue in effect."

ISSUES

The issues in dispute are:

(1) Union's request for increase in wage rates for production and maintenance employees; and,

(2) Union's request for increase in wage rates for cafeteria employees.

The union's request for increases in the wage rates for the production and maintenance employees and for the cafeteria employees are the issues presently before the National Airframe Panel.

Wage Increases

Position of the Union

The union requested wage increases of $.10 per hour in Labor Grades 10, 9, 8, 7, 3, and 2, and $.15 per hour in Labor Grades 6, 5, 4, and 1. This request was based, not on the ground that existing rates do not compare favorably with rates paid by other companies in the area, but on the ground that the cost of living has steadily increased, despite governmental attempts to prevent its rise. The union admitted that present rates are as high as any paid in the area, with the exception of rates paid in the construction industry. The union contended that a portion of the amount requested in the form of a general wage increase was due under the Little Steel formula.

Production and Maintenance Workers.—Under the existing practice at the Curtiss-Wright plants, employees progress from the minimum to the maximum of their labor grades by increases of $.05 per hour every three months with the exception of the first three months, during which period $.05 increases are received at the end of each month. The union's proposal contemplates continuance of this practice, with the substitution of the proposed increased minimum and maximum rates. For example, under the present rate structure an employee in Labor Grade 1 would start at $.65 per hour, receive an increase of $.05 per hour at the end of each month for three months, and then receive $.05 increases every three months until the top rate of $1.60 is reached at the end of 51 months. Under the proposed schedule, an employee in Labor Grade 1 would start at $.75 per hour, receive $.05 increases at the end of each month for the first three months, and continue by $.05 increases every three months to the new maximum of $1.75, which would be reached at the end of 54 months.

In the alternative, if the panel should not recommend and the Board should not award the requested general increases, the union asked that increases be given in order to remove alleged inequalities which had been created by the Board's order of July 17, 1943, in Case No. 2945-CS-D (816),

eliminating the bonus system at the Buffalo plants. In addition, the union asked as an alternative to the request for $.05 and $.10 increases in the 10 labor grades, an increase in the rates for maintenance workers. It was the union's position that the difference in rates paid by the company to its maintenance workers and the rates paid by subcontractors hired by the company to their employees created a serious inequality.

The union contended that the company, because of its inadequate wage scale for maintenance workers, is forced to bring in subcontractors whose employees are paid approximately $1.60 to $1.75 per hour. It was stated that the need for calling a subcontractor because of lack of equipment or insufficient help had become greater in recent months. The union stated that, while there is not a great deal of difference in the actual pay between the men who are brought in and those employed by Curtiss-Wright, the men are aware that the company must pay a premium to the contractor for these employees, the net result of which is that Curtiss-Wright employees know that they are employed by the company at a cost of some $.60 to $.75 less than the cost to the company of the men who are brought in, despite the fact that the groups do identical work.

As an example of the disparity between the rates of Curtiss-Wright Corporation's employees and the employees of subcontractors, it was stated that riggers in the latter group receive $1.75 per hour, while the company's employees receive $1.35. Millwrights, carpenters, and cement finishers are brought in at rates of $1.60, $1.50, and $1.58, respectively, while the company's employees doing the same work receive $1.35 for the three jobs.

With respect to the alleged inequalities resulting from the elimination of the bonus, the union stated that in December 1942 the union was informed by the company that the manufacture of the P-40 fighter planes was to be discontinued, which meant that it would be impossible to continue the bonus. The union agreed with the company to eliminate the bonus, but the manufacture of the P-40 was not discontinued until two years later. As a result of the elimination of the bonus, about 7,000 employees in labor grades 10, 9, 8, 7, and 6, whose bonus earnings had been high, suffered a loss. The union mentioned specifically Departments 219, 112, 212, and 120 as being those departments in which the employees suffered a very substantial loss in earnings. It was stated, for example, that the earnings of employees in Departments 112 and 120 decreased $.14 per hour.

The union stated that the solution to the problem of removing the inequalities that had been created by eliminating the bonus would be to raise the codes of those employees who had suffered a loss in earnings to a labor grade where it would be possible for them to increase the amounts they are now earning to make up for their losses.

The union requested that the retroactive date for the increases necessary to eliminate the alleged inequalities be Jan. 25, 1944, the date the case was certified to the National War Labor Board.

(2) Cafeteria Workers.—The union further requested that the rates for the cafeteria workers at the Curtiss-Wright Buffalo plants be increased in order to remove an inequality which it alleged was created when the Board approved an increase for the cafeteria workers at the Bell Aircraft Corporation [11 War Lab. Rep. 412], the only other airframe company located in the Buffalo area. It was the union's position that, in view of the fact that the Board had allowed Bell to equalize its minimum and maximum rates for production workers with those at Curtiss-Wright, despite the fact that for a period of time the earnings of Curtiss-Wright employees had been higher than the earnings of Bell employees, the rates for the cafetria workers at the two plants should also be made uniform.

The union's proposal was of a general nature, but apparently the proposal would be to slot the cafeteria jobs into the same factory labor grades at Curtiss-Wright that the jobs are in at Bell. If the cafeteria jobs were slotted into labor grades, it would follow that the cafeteria workers would be covered by the existing plan for automatic increases within the Curtiss-Wright factory grades.

The union requested that the effective date of any increase for the cafeteria workers be June 4, 1944, the date that the inequality between the rates for the Curtiss-Wright cafeteria workers and the rates for Bell cafeteria workers was created.

Position of the Company

The company opposed all the increases requested by the union. It stated in the first place that there was

no issue as to whether the "Little Steel" formula had been met, that the union had so admitted, and that increases since January 1941 had been somewhere between 30 and 50 per cent.

(1) Production and Maintenance Workers.—With respect to the alleged inequalities created by the elimination of the bonus, the company referred to the Board's decision of July 17, 1943, in Case No. 2945-CS-D (816) in which the Board directed that the bonus system be replaced by a general wage increase averaging $.145 per hour. The company refused to concede the accuracy of the figures submitted by the union as to the number of employees sustaining substantial losses as a result of the elimination of the bonus or the amount of such losses.

The company argued that the question of determining an appropriate amount to be paid in the form of a general increase to replace the bonus, which the parties themselves had agreed to eliminate, was fully and carefully considered by the panel in the previous case. That panel unanimously recommended increases averaging approximately $.146 per hour to be distributed in accordance with a carefully worked out schedule. The company argued that the panel and the Board had realized that it was inevitable that some employees would receive more and others less than they had previously received under the bonus system.

The company contended with respect to the question of the maintenance workers that it was necessary, in order to perform certain construction and dismantling jobs, to employ outside contractors whose employees receive higher rates than the rates paid to the Curtiss-Wright employees. It would, according to the company, be impossible because of the existing job classification system to raise the rates of its maintenance occupations without raising all other employees in the same labor grades. The company stated that, even if the Board did order an increase in the maintenance rates, it would still be necessary for the company to hire subcontractors for construction and dismantling work.

(2) Cafeteria Workers.—The company's position with respect to the union's request for increased rates for the cafeteria workers was that the present rates are the result of an agreement between the parties reached in January 1943. The rates represented a fair relationship to the rates paid to the production workers, and the company argued that nothing except the increase granted to Bell cafeteria workers had occurred since January 1943 which might alter the situation.

The company contended that the cafeteria is now operating at a loss under OPA ceiling prices and that any increase in the rates for the cafeteria workers would require an increase in food prices. It would be unfortunate, the company claimed, to raise the food prices for 40,000 employees in order to increase the rates for 500 cafeteria employees.

The company further argued that, if the case had not been postponed on several occasions at the request of the union, it would have been decided as of January 1944, prior to the date of the increase to the Bell cafeteria workers. The company declared that it would be grossly unfair under the circumstances to make any increase retroactive.

Findings and Recommendations

The wage requests presented by the union in this case, with the exception of the request for specific increases in the ten labor grades, are of a more or less general nature designed to remove alleged inequalities created by the elimination of the bonus system, inequalities between the company's rates and rates paid by construction concerns for maintenance workers, and inequalities between the Curtiss-Wright and Bell cafeteria employees.

(1) Production and Maintenance Workers.—On July 17, 1943, the Board issued a directive order in Case No. 2945-CS-D (816) which covered the Buffalo plants of the Curtiss-Wright Corporation and the company's plants in St. Louis and Columbus. The decision in that case covered a number of wage issues and must be considered with reference to the wage requests in the instant case. The decision in the earlier case settling many wage issues then in dispute provided, in so far as the Buffalo plants were affected, in brief as follows:

(1) The bonus system was replaced by a general wage increase distributed in accordance with the schedule of maximum rates recommended by the panel. The increases ranged from $.10 per hour resulting in a maximum of $.85 per hour in Labor Grade 1 to $.25 per hour or a maximum of $1.60 per hour in Labor Grade 10. Employees at the time receiving $.75 per hour or less were awarded an increase of $.05 per hour.

(2) The starting rate was increased to $.65 per hour with the provision that beginners were to be advanced by increases of $.05 per hour each month until the minimum of $.80 per hour was reached.

(3) The Board approved a uniform shift bonus of $.10 per hour for the second shift and $.05 per hour for the third shift with 8 hours' pay for 6½ hours' work.

(4) The Board approved the re-evaluating of individual jobs which had been agreed upon through collective bargaining.

The decision of the Board was unanimous and based upon the unanimous recommendations of a five-man panel. The National Airframe Panel is of the firm conviction that the rate schedules established by the Board in the previous case should not be disturbed unless there is a clear showing by the union that the Board's decision has not been fair or equitable or that conditions have in the meantime so changed as to require a change in the Board's decision.

The union's first demand was for increases of $.10 per hour in Labor Grades 10, 9, 8, 7, 3, and 2, and $.15 per hour in grades 6, 5, 4, and 1. This in substance is a demand for a general wage increase for which there is no justification under the existing wage stabilization program. The record is clear that the Little Steel formula has been exhausted. It was admitted by the union that the existing rates are among the highest in the area. The panel, with labor members dissenting, recommends that this request be denied.

The union made alternative requests to be considered if the panel and the board should find that the request for a general wage increase could not be granted. The alternative proposals were based upon the ground that intra-plant inequities were created by the elimination of the bonus system and by the fact that the company has hired subcontractors whose employees are paid higher rates than the rates paid to the Curtiss-Wright employees performing the same work. It is the opinion of the panel that the request for a general wage increase and the alternative requests are not consistent. If the panel recommended approval of and the Board awarded a general wage increase, then there would be no occasion to consider the alternative requests, and the inequalities which the union alleges to exist as a result of the elimination of the bonus would not be removed. The alternative requests have, however, been considered by the panel, since the panel does not recommend a general wage increase.

In considering the question of inequalities created by the elimination of the bonus, the panel again refers to the case involving these same parties, decided by the Board on July 17, 1943. The parties had, prior to that date, agreed to eliminate the bonus system. Both parties had agreed that a wage increase should be given in order to compensate the employees for the loss in earnings resulting from the elimination of the bonus, but no agreement was reached as to how much the increase should be. This issue was presented to the panel in the previous case and discussed at length in its "Report and Recommendations" dated May 21, 1943. The panel found that, over a 2-year period, the bonus had averaged roughly $.15 per hour, and it was unanimously recommended that this amount be distributed to all job rates but in varying amounts, dependent upon the particular job grade. The panel stated that some employees were bound to receive more and others less than they had received under the bonus. The recommendation was adopted unanimously by the Board.

The union's proposal in the instant case covers an estimated 7,000 employees who, it is claimed, suffered a substantial loss in earnings. The total number of employees is approximately 40,000. To grant the union's proposal would have the effect of changing the Board's prior decision. Since the Board was well aware that its decision would of necessity result in a reduction of earnings to some employees, the panel fails to find that the case presents any new matter which would justify the panel in recommending a modification of the Board's earlier order. The panel unanimously recommends that the union's request be denied.

No change is recommended by the panel in the wage rate for maintenance employees. Rates paid to construction workers are, for a number of reasons, generally higher than rates paid in industry in general. The present case presents no novel arguments. Were the Board to grant increases to the maintenance workers in this case, it is obvious that inequalities in the existing job classification system would be created. The labor members of the panel dissent.

(2) Cafeteria Workers.—The union has requested that the rates for the cafeteria workers be raised to the rates paid to the Bell Aircraft Corporation cafeteria workers. At Curtiss-Wright, the cafeteria jobs are not evaluated into either the factory or the office labor grades. The cafeteria workers are hired at $.50 or $.60 per hour, depending upon the particular job, and are advanced by automatic increases to the maximum rates, which range from $.65 to $1.00 per hour. In addition, cafeteria employees receive cash meal allowance of $.07 per hour. If the employees eat their meals at the cafeteria, the allowance is deducted. Premium pay for overtime is given for work over 7½ hours per day and 37½ hours per week and, for the purpose of computing overtime, the cash allowance of $.07 is included in addition to the base rates.

At Bell the cafeteria jobs are slotted into the factory labor grades. Bell cafeteria employees are given free meals, but do not receive a cash meal allowance if meals are eaten outside the cafeteria. Premium pay is given for work beyond 40 hours per week and is computed on the basis of the regular hourly rates.

There are 13 Curtiss-Wright cafeteria jobs, 11 of which appear to be comparable to Bell jobs. If these 11 jobs were slotted in the same Curtiss-Wright factory grades as the corresponding jobs are slotted in at Bell, the minimum rates for all jobs would be increased by $.05 to $.15 per hour. The average increase in minimum rates, weighted by the number of employees in each job, would be $.138 per hour for the 460 cafeteria employees. Maximum rates would be increased by amounts ranging from $.10 per hour to $.30 per hour with an average of $.19 per hour. It is clear, therefore, that there is a wide discrepancy between the rates of the two companies.

However, it is impossible for the panel to say whether the jobs at the 2 companies are entirely comparable or that, simply because one job at Bell may happen to be classified in Labor Grade 7, it should be similarly classified at Curtiss-Wright. Furthermore, the panel does not make any finding that the Curtiss-Wright rates should necessarily be brought up to Bell rates, although it is noted that the rates at the two companies in general are similar. Maximum factory labor grade rates at Curtiss-Wright are, for example, the same as the maximum factory labor grade rates at Bell.

No satisfactory solution of the problem can be made on the basis of the brackets of sound and tested going rates. The New York Regional War Labor Board has not established brackets for cafeteria occupations in the Buffalo area. The Regional Board is presently using the brackets established for the New York metropolitan area as tentative brackets in the processing of cases involving cafeteria occupations in the Buffalo area. The present minimum rates for Curtiss-Wright cafeteria jobs are all below approvable minima by amounts ranging from $.03 to $.26 per hour. The present maxima at Curtiss-Wright are in line with approvable maxima except for the job of baker, the present maximum of which is $.14 below the approvable maximum.

The panel believes that the proper solution to the settlement of the dispute concerning the rates for cafeteria workers is for the parties to evaluate the jobs and place them in appropriate labor grades. While the panel has compared the Curtiss-Wright rates with the rates paid by Bell (since that was the basic argument upon which the union contended that a wage increase was justified), and has also reviewed the union request in the light of the brackets of sound and tested going rates presently being used by the New York Regional War Labor Board, the primary reason for the panel's recommendation is the need for eliminating whatever intra-plant inequities may exist. It is with this idea in mind that the panel recommends that the parties be directed to evaluate the jobs and slot them into appropriate labor grades and to report back to the Board after a thirty-day period. One industry member dissents.

The union requested that the effective date of any increase in wages for the cafeteria workers be June 14, 1944, the date upon which the National War Labor Board authorized Bell to evaluate its cafeteria jobs into the labor grade schedule. The Bell rates were thereby brought above the rates at Curtiss-Wright.

A majority of the panel, with the labor members dissenting, recommends that, because of the particular circumstances of this case, the evaluation of the jobs which the panel recommends be undertaken be made effective as of the date of the Board's order. This recommendation is made with due regard to the policy developed by the Board for setting the date upon

which any wage adjustment should take effect.

This case was certified to the National War Labor Board by the Secretary of Labor on Jan. 25, 1944. The union on several occasions requested a postponement of the hearing until such time as the Board made a final decision in Case No. 2945-CS-D, involving the Buffalo, Louisville, and St. Louis plants of the company, on the question of the elimination of the simple and intermediate codes. The Board approved the agreement to eliminate the simple and intermediate codes in April 1944 and reaffirmed it on Sept. 8, 1944. The agreement was approved by the Director of Economic Stabilization on Oct. 27, 1944.

In the meantime, the panel had scheduled a hearing in the instant case for June 15, 1944. The parties met with the panel in Washington on this date, and the union again requested and was granted a postponement. The issues which were apparently in dispute at that time were listed in the company's brief as follows:

"1. General wage increase.

"2. Reopening of an agreement under which all job classifications in the plants are to remain in effect for the duration of the war.

"3. Automatic up-grading of employees in certain occupations."

The union submitted a brief which was received by the panel on June 13, 1944. This brief discussed only the matter of a general wage increase and specifically requested general increases of $.10 per hour in Labor Grades 10, 9, 8, 7, 3, and 2, and $.15 per hour in Labor Grades 6, 5, 4 and 1. In discussing at the meeting on June 15, 1944, the issues which at that time were in dispute, the president of the local union at Buffalo stated:

"As you will note, the company submitted the brief in which they took up three issues. We did not; we only submitted one, taking up wages. Now the reason for so doing is that, if the elimination is granted, the other two issues become dead and are eliminated. If the simple and intermediate codes are not eliminated, these other two issues become very much alive.

"We feel that, having waited since Dec. 17, 1942, to get a directive eliminating simple and intermediate codes or refusing to eliminate them, we are entitled to a directive one way or the other on that case before we proceed any further. We also feel that, if we proceed at the present time on the wage items, it would be prejudicial to our case that is now before the Board involving the relation of simple and intermediate codes.

"We realize, of course, that we came down here today as instructed by the panel, prepared briefs, and sent them in. We did that only because of the fact that we were told to and because I felt it might be necessary for us to proceed, but we would not be prepared to go ahead and are not prepared to go ahead on the other two issues, and we are not prepared to withdraw them. We can't withdraw until we have a decision on the other case."

No reference was made at that time to the question of rates for cafeteria jobs nor would these jobs have been affected by any increase in the labor grades since they are not evaluated into the labor grades.

It is the opinion of the majority of the panel that, in the absence of any specific request for adjustments in cafeteria rates prior to the date the panel conducted the hearing and in view of the repeated requests of the union for a postponement of the proceeding until a final decision was made on the elimination of the simple and intermediate codes, which decision when made did not affect the cafeteria workers, it would be grossly inequitable to make the evaluation of the cafeteria jobs retroactive to Jan. 25, 1944, the date on which the case was certified to the Board and the date proposed by the labor members of the panel.

Nor does the panel majority find any justification for the date requested by the union, June 14, 1944, which was the date the Board approved the agreement in the Bell case to evaluate cafeteria jobs. The basis of the recommendation of the majority that the parties evaluate cafeteria jobs is not that there is an inequality between Bell rates and Curtiss-Wright rates, but rather that Curtiss-Wright jobs should be properly evaluated with due consideration being given to any intra-plant inequalities which might exist between the evaluated factory jobs and the nonevaluated cafeteria jobs.

In view of all the facts in the case, the majority concludes that it would be inequitable to require the company to make retroactive any adjustments which may result from the evaluation of the cafeteria jobs. The dissenting opinion of the labor members is attached.

Signed by Benjamin Aaron and, Philip S. Brayton, public members; Paul S. Chalfant and John Meade, employer members, Mr. Chalfant subject to dissent on cafeteria rates; and Garry Cotton and Andrew Leiper, labor members, subject to dissent on general wage increase in labor grades, increase in maintenance rates, and retroactivity.

Dissenting Opinion of Labor Representative

EFFECTIVE DATE

The labor members dissenting on the majority motion believe that the policy normally followed by the Board should apply in this case. Regardless of whether the award was made on the basis of inter-plant or intra-plant inequities, the date of certification, Jan. 26, 1944, should be awarded as the effective date of the new rates. The union stated that it was willing to waive this earlier date and asked that June 14, 1944, be ordered. This is the date the Board put into effect new rates for cafeteria workers at the Bell Buffalo plant, thereby creating an inter-plant inequity in addition to the intra-plant inequity that previously existed in both plants.

In denying the unions' request, the majority opinion stresses the delay resulting from the unions' requests for postponement of the hearing. These requests for postponement and the resulting delay must be placed directly in the lap of the War Labor Board. They, and they alone, are responsible for the manner in which they handled Case No. 2945-CS-D [15 War Lab. Rep. 750]. Final award in this case was not rendered until Oct. 27, 1944, making it impossible to determine the issues in this Case No. 111-6193-D. We say the War Labor Board is responsible because:

In January 1943, the union appeared before the Board in dispute Case No. 2945-CS-D and, among other things, both parties to the dispute asked for approval to eliminate the simple and intermediate codes. This request resulted from an agreement between the parties that they would freeze the job descriptions and evaluations for the duration of the war if the Board would approve the elimination of the simple and intermediate codes. The Board could have approved or denied this request. However, the Board did neither. They approved the freezing of the job evaluations but delayed taking any action on the other half of the parties' agreement. The company then did freeze all jobs, forcing the union to wait on the Board for relief. This they did with what patience they could, until Oct. 27, 1944, some 22 months later. During this 22 months, the union requested, by every means at its command, that the Board hand down its decision.

While it is true that on Apr. 13, 1944, the Board, by a four to two vote, approved the elimination of these codes and issued their order May 3, 1944, it was subject to the approval of the Director of Economic Stabilization, who failed to approve it and returned it to the Board. When the action of approval was taken by the Board, the Airframe Panel set a hearing date of June 15, 1944, for Case No. 111-6193-D. The union was then forced to ask for a postponement on this date because the action of the Director of Economic Stabilization left the issue without a determination. The parties again pressed for a decision. The Board then set July 5, 1944, to hear the parties. This hearing was then postponed to July 15, 1944, when the parties appeared before the Board, resulting in a decision Sept. 8, 1944. This was finally approved by the Director of Economic Stabilization and became valid Oct. 27, 1944.

The majority opinion takes the position that no mention of cafeteria workers was made in the brief of the union and that the increase for labor grades would not affect the cafeteria workers. While it it true that no segregation of items of wages was made in the union's brief, the cafeteria workers were a part of the unit involved in the case, and wages was an issue. The issue of rates for cafeteria workers was specifically brought into the hearing and would have been brought up at any time the hearing had been held. As to segregating the issue of cafeteria workers and hearing them as an independent issue at an earlier date, we are of the opinion that the Board would have denied such a request on the part of the union since they are all one unit certified in one single case. And again, if their rates are an issue now, they were an issue at all times.

Again we wish to repeat that the full responsibility for the delays in this case lie with the Board, and it would be rank injustice to set an effective date later than that asked

by the union. The normal policy of the Board would be to set the effective date as of Jan. 25, 1944, the expiration date of the old agreement.

Signed by Garry Cotton and Andrew Lieper, labor members.

ATLAS POWDER CO.—
Decision of National Board

In re ATLAS POWDER COMPANY, WELDON SPRINGS ORDNANCE WORKS [Weldon Springs, Mo.] *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, PLANT PROTECTION LOCAL 815 (CIO). Case No. 111-2204-D, (7-D-297), June 1, 1945 (made public Aug. 7, 1945).

Amending 21 War Lab. Rep. 196.

PREMIUM WAGE RATES—Night-shift differential—Plant protection employees

Plant protection employees in powder plant are entitled to night-shift premiums of four and six cents for work on second and third shifts respectively. Regional Board's order granting five and ten cents on basis of area practice is amended accordingly, Regional Board having resolved doubt in favor of premium although employer claimed that base rates included compensation for night work.

For other rulings see Index-Digest 140.589 in this or other volumes.

Majority decision of Board amending directive order of Regional Board VII (Kansas City). Public members concurring: George W. Taylor, Nathan P. Feinsinger, Lewis M. Gill, and Lloyd K. Garrison. Employer members dissenting on Par. I: Earl S. Cannon, Walter Knauss, Fred V. Climer, and S. Bayard Colgate. Labor members dissenting on Par. II: Van A. Bittner, Carl J. Shipley, Robert J. Watt and James A. Brownlow.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition for review filed by the company in the above entitled case and having reviewed the merits of the case with respect to the issue involving the night-shift bonus and having considered the petition for review filed by the union in this case, hereby takes the following action:

I. Par. I of the Seventh Regional War Labor Board's directive order of Dec. 19, 1944 [21 War Lab. Rep. 196] is hereby modified to read as follows:

The Board hereby directs the payment of a four-cent per hour bonus for work performed on the second shift and a six-cent per hour bonus for work performed on the third shift.*

II. The petition for review filed by the union is hereby denied.

III. The union's request for an oral hearing is denied.

IV. Subject to the provisions of Par. I above, the terms and conditions of employment set forth in the Seventh Regional War Labor Board's directive order of Dec. 19, 1944, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

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* ED. NOTE: Four and six cents are the limits on shift premiums in continuous operation industries which were specified in the Stabilization Director's instructions to the War Labor Board on fringe issues, 23 War Lab. Rep. No. 4, V. His instructions provided that such ceilings should be exceeded only when justified by clear and well defined area or industry practice.

GOODYEAR AIRCRAFT CORP.—

Decision of National Board

In re GOODYEAR AIRCRAFT CORPORATION [Akron, Ohio] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 856 (CIO). Case No. 111-15913-D, June 12, 1945 (made public Aug. 7, 1945).

ARBITRATION—Discharge dispute—Dispute over refusal of reemployment

Parties whose grievance procedure does not provide for arbitration should submit to arbitration grievances presented by union over (1) alleged discharge of employee without just cause and (2) refusal to reinstate employee returning to work after sick leave. Issue to be arbitrated in second dispute is whether company's refusal to reinstate employee was based on report of plant physician or on some other reason which is not ground for refusal to grant reinstatement under contract.

For other rulings see Index-Digest 10.124 and 10.127 in this or other volumes.

Majority decision of Board adopting recommendations of National Airframe Panel. Public members concurring: Lewis M. Gill and Jesse Freidin. Labor members concurring: Carl J. Shipley and Elmer E. Walker. Employer members dissenting on Par. 2: Clarence O. Skinner and Vincent P. Ahearn.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby orders the following:

1. The dispute regarding the discharge of Sam Beck shall be submitted to arbitration.

2. The dispute regarding Mossalene Hoy shall be submitted to arbitration; provided, however, that the issue to be arbitrated shall be whether the corporation's refusal to reinstate Miss Hoy to her former job was based upon the report of the plant doctor or was for another reason which, under the contract, is not justification for refusing to reinstate her to her former job.

Report and Recommendation of the National Airframe Panel

June 6, 1945

On June 1, 1945, the above case was referred to the National Airframe Panel by the New Case Committee. The dispute involves the discharge of one employee and the reemployment of an employee on her old job, upon her return after a leave of absence for sickness.

BACKGROUND

The background of the case is stated in the synopsis of the U. S. Conciliation Service as follows:

"Contract between the parties expires Dec. 27, 1945. Grievance procedure has not been completed and does not contain an arbitration clause as a terminal point.

"Two grievances were processed by the union through all of the available steps of the grievance procedure, and when a deadlock was reached, a request was made for the services of the U. S. Conciliation Service. On Apr. 13, 1945, Commissioner W. W. Powell was assigned, and on May 7, 1945, Commissioner Powell reported that conciliation could not bring about agreement between the parties. Company was unwilling to arbitrate the dispute although the union was agreeable to this procedure."

ISSUES

"1. Union alleges that one employee, Sam Beck, was discharged Jan. 15, 1945, without just cause.

"Company contends that this employee was justly discharged for insubordination.

"2. Union contends that one employee, Mossalene Hoy, who had been granted a leave of absence for sickness, had returned to health and should be placed upon her old job.

"Company contends that the plant doctor would not permit the reemployment of Miss Hoy on her old job which involved being near moving machinery. Company further contends it offered the employee office work which she refused, and therefore the employee has quit."

RECOMMENDATION

Unanimous recommendation that the parties be directed to submit Issue No. 1 to arbitration.

Four to two, industry members dis-

senting, that the parties be directed to submit Issue No. 2 to arbitration.

Signed by Benjamin Aaron and Philip S. Brayton, public members; Paul Chalfant and R. Randall Irwin, employer members; and Gary Cotton and Andrew Leiper, labor members.

GLENN L. MARTIN CO.—

Decision of National Board

In re GLENN L. MARTIN COMPANY [Fort Crook, Nebr.] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 107 (CIO). Case No. 111-16022-D, June 12, 1945 (made public Aug. 7, 1945).

ARBITRATION—Suspension of employees for refusal to perform assigned tasks—

Parties in process of negotiating first contract who have agreed verbally on grievance procedure not terminating in arbitration should submit to arbitration dispute over company's suspension of 20 employees for refusal to perform work assigned by their supervisors. Arbitrator should decide whether company's action was unreasonable or arbitrary under circumstances of case.

For other rulings see Index-Digest 10.173 in this or other volumes.

Unanimous decision of Board adopting recommendations of National Airframe Panel. Public members concurring: Lewis M. Gill and Jesse Freidin. Labor members concurring: Carl J. Shipley and Elmer E. Walker. Employer members concurring: Clarence O. Skinner and Vincent P. Ahern.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby directs the parties to submit the dispute to arbitration; the issue to be decided by the arbitrator shall be whether the company's action in suspending the 20 employees was unreasonable or arbitrary under the circumstances.

Report and Recommendation of the National Airframe Panel

June 6, 1945

On June 1, 1945, the above case was referred to the National Airframe Panel by the New Case Committee. The dispute involves the suspension of 20 employees.

BACKGROUND

The background of the case is stated in the synopsis prepared by the U. S. Conciliation Service as follows:

"This union was certified by the NLRB Mar. 4, 1944, and the parties have been in negotiations for their first contract since May 1944. The parties have agreed verbally on a method of handling grievances which does not terminate in arbitration. This dispute arose when 20 employees were suspended for refusal to perform work assigned by their supervisors. This occurred on Apr. 5, 1945. The employees were suspended for six days. On Apr. 7, at the request of the union, a commissioner was assigned to attempt an adjustment. He arranged conferences at which [the] company insisted that they are within their rights in suspending these men for refusal to perform assigned tasks. The union insisted that the men were suspended for refusing to perform work on one of the bombers outside of the building, that the weather was very cold, and they were not equipped with the proper clothing to work outside.

"The six days have elapsed, and the men have returned to their jobs.

"The union is demanding that the men be paid for the time lost as a result of this dispute. The company has refused. Commissioner was unable to effect a settlement.

"Parties would not submit dispute to arbitration, hearing officer, or to the War Labor Board on briefs."

RECOMMENDATION

Six to one that the parties be directed to submit the dispute to arbitration.

Signed by Benjamin Aaron and Philip S. Brayton, public members; Paul Chalfont and R. Randall Irwin, employer members; and Gary Cotton and Andrew Leiper, labor members.

GENERAL MOTORS CORP.—

Decision of National Board

In re GENERAL MOTORS CORPORATION, GENERAL MOTORS PARTS DIV. [Pittsburgh, Pa.] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, LOCAL 926 (AFL). Case No. 111-6345-D, June 4, 1945 (made public Aug. 7, 1945).

CHECK-OFF—Small bargaining unit —Collection allowed on company property

Responsible union is entitled to voluntary check-off with proviso that neither party should coerce any employee into signing authorization for dues deduction. Regional Board's order denying check-off because of small size of bargaining unit and because company permitted dues collection on company property is accordingly reversed.

For other rulings see Index-Digst 20.779 in this or other volumes.

Majority decision of Board amending directive order of Regional Board XI (Detroit). Public members concurring: Lewis M. Gill and Dexter M. Keezer. Employer members dissenting on acceptance in part of union petition and on Pars. I and IV: Lee H. Hill and Earl Cannon. Labor members dissenting on Pars. II and III: Ray McCall and Delmond Garst.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petitions filed by the parties for review of the Eleventh Regional War Labor Board's directive order of Feb. 21, 1945, in the above entitled case and having accepted in part the union's petition and having reviewed the merits of the case with respect to check-off and seniority, hereby orders:

I. Check-Off

Part I, Par. 2 of the said directive order of Feb. 21, 1945, is vacated and the following provision substituted therefor:

"The company shall deduct from their wages and turn over to the proper officers of the union the initiation fees and union dues of such members of the union as individually and voluntarily certify in writing that they authorize such deductions.

"The company and the union each agree that neither of them nor any of their officers or members or employees will intimidate or coerce employees into executing such certificates. If any dispute arises as to whether there has been any violation of this pledge, such dispute shall be regarded as a grievance and submitted to the grievance procedure established by this agreement."

II. Seniority

This issue is remanded to the Regional Board for clarification of the words "temporary reduction in force" as used in Part I, Par. 5 of the said directive order of Feb. 21, 1945.

That part of the union's petition which relates to job groupings is denied.

The petition for review filed by the company is denied.

The terms and conditions of employment set forth in the Eleventh Regional War Labor Board's directive order of Feb. 21, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

First Directive Order of Regional Board XI (Detroit)

Feb. 21, 1945

I. The Regional War Labor Board for the Eleventh Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties.

1. The union is awarded a standard maintenance-of-membership provision as adopted by the National War Labor Board on Nov. 27, 1943 [12 War Lab. Rep. XXVIII; WCDS 321].

2. The union's request for a check-off is denied in view of the small number of employees in this bargaining unit and the fact that collection of dues on company property is permitted.

3. The union's request for change in the present job groupings is denied.

4. Grievances involving claims of personal prejudice or discrimination for union activity in connection with change of positions or transfers shall be processed in accordance with the regular grievance procedure.

5. The union's request with respect to observing seniority in temporary reductions in force is denied.

6. The union's request for change in Par. 76 of the agreement dealing with laws of the United States is denied.

7. The union's request for change in Par. 77 of the agreement is denied.

Action on the issues of a general wage increase, seniority provisions, and retroactivity is withheld pending referral of the wage and seniority issues to Regional Board III for additional information.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 15 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately effective.

Signed by Louis C. Miriani and Ralph J. Ziegler, public members; Willis H. Hall and Stephen S. Dunn, employer members, subject to dissent on Pars. 1, 4, and referral of wage seniority issues to the Philadelphia Board; and Archie Virtue and Daniel M. Gallagher, labor members, subject to dissent on Pars. 2, 3, 5, 6, and 7.

Report of Hearing Officer *

PARTIES

The General Motors Parts division of the General Motors Corporation operates 47 warehouses throughout the United States. This division of the corporation is engaged in the distribution of automobile parts and accessories to dealers. The instant dispute involves the division's Pittsburgh warehouse (hereafter referred to as the company) and the Parking Lot Attendants and Garage Employees Union, Local 926, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL) (hereafter referred to as the union) which represents all of the company's 55 hourly-rated employees.

BACKGROUND

The union was certified as the sole collective bargaining agency for the aforementioned employees in October 1940. The first contract entered into by the parties expired on June 5, 1942. The next and most recent contract expired on Dec. 5, 1943 but has been extended indefinitely pending the outcome of the instant dispute which arose during negotiation of a new contract. The case was originally certified to the National War Labor Board by the U. S. Conciliation Service on Feb. 3, 1944, the disputed issues being wages and retroactivity. A hearing was held on Mar. 17, 1944, in Pittsburgh, at which time the union advised that there were several additional issues in dispute which had not been certified. The company's request to adjourn the hearing for the purpose of consideration and further negotiation of the disputed issues was acceptable to the union. Following the adjournment of the hearing, despite inquiries from the Disputes Division of the Third Regional War Labor Board, no advice concerning the status of their negotiations was received from either party until June 16, 1944, at which time

* Only those portions of the hearing officer's report relating to check-off, seniority, and temporary reductions in force are reproduced.

It was stated that negotiations were continuing. On Aug. 15, 1944, the union requested that a hearing date be scheduled. However, the company requested that the case be referred to the Automotive Section for the Eleventh Regional War Labor Board under the terms of the National Board's resolution of Aug. 15, 1944 [18 War Lab. Rep. XVIII, WCDS 168] extending the jurisdiction of the Automotive Section to all dispute cases involving the General Motors Corporation.

This matter was referred to the New Case Committee in Washington, D. C., which resulted in the transfer of the case to the Automotive Section of the Eleventh Regional War Labor Board. At the request of that Section, the Third Regional War Labor Board designated a hearing officer to conduct a fact finding hearing on the issues in the case and to make a report to the Automotive Section. After several postponements requested by the company, a hearing was held in Pittsburgh on Jan. 10, 1945.

ISSUES

The issues which are currently in dispute are as follows:

1. Closed shop,
2. Check-off,
3. Job groupings,
4. General wage rate increases,
5. Retroactivity,
6. Seniority clause,
7. Transfers,
8. Temporary reductions in force,
9. "Laws of the United States" clause, and
10. Clause voiding prior agreements.

I and II. Closed Shop and Check-off

Union's Position

The union states that it has contractual relations with 35 companies in the area and that all provide for a closed shop. Relations between the union and these companies have been excellent. The union has consented to modifications of the closed shop during the war since the U. S. Employment Service now refers employees to these companies. However, these new employees are required to join the union.

The union asserts that it has proved its responsibility by complete observance of the no-strike pledge which, in turn, prevents it from utilizing economic strength which would have resulted in a grant of the closed shop by the company in prewar years.

The fact that a few employees do not belong to the union and yet enjoy benefits achieved through the work and expense of the union members causes great dissatisfaction and lowered morale. The union therefore concludes that the Board should exercise its authority to order union security in the form of the closed shop.

The union requests that the company check off dues, initiation fees, and assessments following submission of employees' irrevocable authorizations. The union states that dues collections require several trips per month by union stewards and altogether require an inordinate amount of time which could be better spent in the interest of the war effort. The union points to the company's present "check-off" of group insurance deductions as evidence that the company could grant the union's request with very little additional work or expense.

Company's Position

The company's opposition to any form of union security is based on the following:

(a) The War Labor Board does not order a closed shop unless it has been previously negotiated by the parties.

(b) The Board's decision in the case of Fehlig Brothers Lumber Company (13 War Lab. Rep. 313) indicates that industry or area practice is not a factor in deciding this issue.

(c) Union security violates the National Labor Relations Act, hinders the war effort, and is unsound and unnecessary.

(d) Maintenance of membership or a closed shop does not result in union security.

The company resists the union's request for check-off on the grounds that dues collections are solely the union problem and that the General Motors Corporation has no contracts which provide for this form of union security. The company also declares that it is opposed to any kind of compulsory deductions from the employee's pay check. It is claimed that, since the bargaining unit is relatively small and since dues collections are permitted on company property (on the worker's own time), dues collections should not be a difficult problem.

Discussion

The present and past contracts between the company and the union did

not provide for any form of union security.

No allegations have been made with regard to the question of the union's responsibility and democracy.

The arguments presented by the parties in support of their requests that the Board deviate from normal policy on this issue are not novel or compelling. It therefore appears that the principles enunciated in the majority opinion in the case of the Humble Oil Company [15 War Lab. Rep. 380] are applicable.

[ED. NOTE:—Issues III through V, discussed in the hearing officers' report at this point, are omitted.]

VI. Seniority Clause

Union's Position

The present agreement provides that new employees are considered as temporary employees for the first six continuous months of employment and that they acquire no seniority during this period. After the completion of six months, the employee is placed on the seniority list as of the date of hiring.

The union states that there is no justification for a probationary period of this length in view of the nature of the work performed. The union feels that a thirty-day probationary period is adequate time in which the company can determine the competence and general desirablility of a new employee. The union therefore requests that new employees be placed on the seniority list after thirty days of employment.

The union also requests that seniority be computed on a plant-wide basis rather than on the basis of job groupings A, B, and C, as at present.

Company's Position

The company does not consider thirty days a reasonable period in which to determine the employee's job performance, punctuality and attendance, observance of safety rules, attitude toward the job, ability to act along with other employees, potentiality for further advancement, etc. The prevailing practice throughout the General Motors Corporation is said to provide for a six-month probationary period.

Discussion

The present seniority clause provides for layoffs in the following manner:

1. Temporary employees (less than six months' service)

2. Employees in seniority groups A, B, and C are laid off within such groups in the order of lowest seniority in each group, provided that no employee with greater seniority shall be laid off while an employee with less seniority is working in a lower seniority group.

[ED. NOTE:—Issue VII, discussed in the hearing officer's report at this point, is omitted.]

VIII. Temporary Reductions in Force

Union's Position

The union declares that, when employees are sent home before the close of their regular shifts because of temporary reductions in the volume of work, seniority is completely ignored. The union states that this is not conducive to good morale and asks that the following clause be ordered:

"For temporary reductions in volume, one or more employees may be sent home before the close of their regular shift according to seniority."

Company's Position

The present practice of ignoring seniority for short-time layoffs is in line with prevailing and generally accepted practice in the automotive industry.

[ED. NOTE: Issues IX and X, discussed in the hearing officer's report at this point, are omitted.]

Signed by Marvin J. Miller, hearing officer for Board.

MINES EQUIPMENT CO.—

Decision of National Board

In re MINES EQUIPMENT COMPANY [St. Louis, Mo.] *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 810 (CIO). Case No. 111-7994-D, June 27, 1945 (made public Aug. 7, 1945).

Amending 20 War Lab. Rep. 423.

WAGE ADJUSTMENTS — Length-of-service increases—Merit increases —Retroactive application

Computation of sums due employees under retroactive application of directed wage-progression plan should be left to parties for settlement rea-

sonably related to principles of established plan; increases granted since retroactivity date to be offset against amounts otherwise due. Regional Board's order setting forth specific method of computation is vacated.

For other rulings see Index-Digest 225.398 and 225.630 in this or other volumes.

SENIORITY—Ability and skill as factors

As applied to layoffs, reemployment, transfers, promotions, and demotions, seniority should govern where ability and skill are substantially equal. Regional Board's order providing that seniority shall be governing factor only if ability is relatively equal is modified accordingly.

For other rulings see Index-Digest 155.420, 155.540, and 155.600 in this or other volumes.

Majority decision of Board amending decisions of Region VII (Kansas City). Public members concurring: Edwin E. Witte and Dexter M. Keezer. Employer members dissenting on acceptance in part of union's petition, Pars. I, II, and IV: Earl M. Cannon and S. Bayard Colgate. Labor members disesnting on Par. III: Delmond Garst and Elmer E. Walker.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 23, 1943, the National War Labor Board, having considered the petitions filed by the parties for review of the directive order dated Nov. 18, 1944 [20 War Lab. Rep. 423], and the supplementary directive order dated Jan. 17, 1945, of the National War Labor Board for the Seventh Region, issued in the above entitled case, and having accepted, in so far as it relates to seniority, the union's petition and, in so far as it relates to application of retroactive formula, the joint petition, and having reviewed the merits of the case with respect to the above mentioned issues, hereby decides the dispute between the parties and orders:

I. Progression

Par. I(f) of the supplementary directive order dated Jan. 17, 1945, is hereby modified to provide that the following be substituted therefor:

Under the Board's established policy concerning retroactivity of wage adjustments, the objective standards, when agreed upon, would be applied retroactively in individual cases to May 11, 1944, subject to offsets by merit increases granted since that date. The parties may agree on any settlement of the retroactive issue reasonably related to that principle. In the event the parties do not agree, the issue shall be returned to the National War Labor Board for decision.

II. Seniority

Par. 7(b), Sec. 1, of the said directive order dated Nov. 18, 1944, is hereby modified to provide that the following is substituted therefor:

"Seniority shall be the determining factor in matters affecting layoff and reemployment, transfers, and demotions and promotions where ability and skill are substantially equal. Seniority shall not be applied in the case of promotions or demotions from any supervisory position or any other position not within the collective bargaining unit represented by the union as described in Art. I."

III. The remainder of the union's petition for review is hereby denied.

IV. The company's petition for review is hereby denied.

V. Subject to the provisions of Pars. I and II above, the terms and conditions of employment set forth in said directive orders dated Nov. 18, 1944, and Jan. 17, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Supplemental Directive Order of Regional Board VII (Kansas City)

Jan. 17, 1945

The Regional War Labor Board for the Seventh Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby supplements its directive order of Nov. 18, 1944, and decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Progression

The agreement between the parties shall provide for the following progression plan:

(a) The company and the union shall, by agreement or by arbitration (with the arbitrator named by agreement of the parties or, if failing to agree, by the chairman of the Seventh Regional War Labor Board, expenses to be borne equally by the parties) within thirty (30) days of the date upon which this order becomes operative, establish objective standards of performance which shall fairly reflect the efficiency, skill, and production requirements (as measured by such factors as quality of output, quantity of production, and attendance) which should be met by employees of various classifications as a condition of their being advanced within the applicable rate ranges.

(b) On or immediately after Jan. 1, Apr. 1, July 1, and Oct. 1 of each year, each employee who has been employed throughout the preceding three months shall be the subject of consideration by the employer in order to determine whether or not the employee has satisfied the standards of meritorious performance established as above. If the employer determines that the performance of the employee warrants, a merit adjustment in rates shall be made accordingly, effective as of the quarterly review date. A list of the employees to whom increases have been granted shall be furnished by the employer to the union. Merit review, either of individual employees or of groups of employees may, by agreement of the company and the union, be made at different intervals from those herein prescribed.

(c) A disagreement as to whether an employee whose performance has thus been reviewed should or should not receive a merit step increase shall be resolved through the established grievance procedure. Upon the request of an individual employee or of the union, the company shall furnish a written explanation of its reason for concluding that a merit increase should not be granted.

(d) A merit adjustment in an individual employee's hourly wage rate shall be in the amount of five cents (5¢) or one-half of the rate range in that employee's classification, whichever may be smaller; except that a lesser amount may be granted when necessary in order to raise an employer to the top of the rate range in his classification. The allowable amounts prescribed by this paragraph may be altered by agreement of the parties.

(e) The total of the wage adjustments given under the above provisions to employees who are at or above the mid-point of their respective rate ranges shall in no event exceed, for those at or above the mid-point of their respective rate ranges, an overall average of five cents (5¢) per hour in any 12-month period commencing July 1 of one year and terminating June 30 of the next year. The five cents (5¢) per hour is intended as an overall limitation on merit increases for such employees. The permissible amount of merit increases for such employees (subject to this overall limitation) is to be determined by the objective criteria as provided in Par. A.

(f) The hourly wage rate of each present employee below the maximum of his respective rate range shall (except as provided in this paragraph) be adjusted retroactively to May 11, 1944, or if the employee had not then completed three months of service, to the date upon which he did complete three months of service. The amount of the increase to be made in the hourly wage rate shall be computed in accordance with the following formula:

$$\frac{D}{365} \times M = \text{hourly increase.}$$

In this formula, the symbol "D" signifies the number of days between May 11, 1944, and the date upon which the present directive order becomes operative. The symbol "M" signifies the five-cent (5¢) average increase permissible under Sec. II-C-1(c) of General Order 31 [23 War Lab. Rep. No. 1, IV; WCDS 143]; or, if the employer granted a higher average of merit and length-of-service increases during the 12 months immediately preceding May 11, 1944 (under a plan properly established in accordance with General Order 31), the symbol "M" signifies the higher figure. The hourly increase resulting from the application of the above formula shall be rounded off to the nearest half cent. If a lesser amount will bring an employee to the to pof his rate range, then only that lesser amount shall be granted as an increase to that employee. If an employee has received a merit increase during the pendency of this dispute,

the merit increase given to that employee shall, from date upon which it was made, be charged against whatever retroactive award might otherwise have been granted to him pursuant to this order.

2. Other Issues

With regard to other issues raised by the parties and covered in their "Report of Negotiations," the parties are directed to negotiate further on these matters for a period of thirty (30) days from the date of this order. In the event an agreement is not reached upon all matters, the unsettled issues shall be referred to an arbitrator mutually agreed upon by the parties or, in the event the parties fail to agree, an arbitrator shall be named by the chairman of the Seventh Regional War Labor Board. The expenses for arbitration shall be borne equally by the parties.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fourteen (14) days from the date hereof unless, in the meantime, a petition for review by the National War Labor Board is filed with the Seventh Regional War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, subject to the following provision:

As required by Executive Orders No. 9250 and 9328, as supplemented by the directive of May 12, 1943, Par. 1 of this order shall, in any event, become effective only upon determination by the Office of Price Administration that the wage increase ordered in that paragraph will not require any change in price ceilings, or, if no such determination is made, then upon approval by the Director of Economic Stabilization. The parties will be promptly notified of such action.

As provided in Sec. 802.40 of the "Rules of Organization and Procedure of the National War Labor Board," this order is subject to review by the National War Labor Board at any time on its own motion.

Signed by Russell S. Bauder, Paul G. Toohey, and Frank T. Stockton, public members; Hugh S. O'Neill, Irwin L. DeShetler, and Sol S. Rosner, labor members; and Gerald Gordon, Donald E. Devries, and George H. Kinney, employer members, subject to dissent on 1 and 2, progressions and other issues.

Report and Recommendations of the Panel *

PARTIES TO THE DISPUTE

Company

The Mines Equipment Company was incorporated under the laws of Missouri in 1935, and the plant involved in this case is located at 4215 Clayton Avenue, St. Louis, Mo. The company manufactures various types of industrial electrical equipment, principally molded rubber cable connectors, lighting sets, instrument lights, and cable vulcanizers. During the year ending Dec. 31, 1943, the company produced about $8,136,000 of goods, 98 per cent of which were directly for use in the war effort, 2 per cent almost entirely going to mines, railroads, and shipyards.

The company employs about 1,800 workers, of whom 59 per cent are women. About 125 employees are involved in this case, 51 per cent being women.

Union

The union is Local No. 810, United Electrical, Radio and Machine Workers of America (CIO).

HISTORY OF NEGOTIATIONS

The union was certified as the collective bargaining agent by the NLRB Feb. 29, 1944. Negotiations began Mar. 7, 1944, and continued to Mar. 31, 1944, in an attempt to reach an agreement on the first contract. Conciliation Service was called in, and a number of issues were settled, but others remained in dispute.

For further detailed history of the relationship between the parties, reference is made to "Company Brief," p. 3.

This case was brought before this panel on June 13, 1944, at Room 516,

* ED. NOTE: Only those portions of the panel report and recommendations relating to wage progressions and seniority are reproduced.

New Federal Building, 12th and Market Streets, St. Louis, Mo., and, argument on the issues not having been completed, the hearing was resumed and concluded on June 14, 1944, at Jefferson Hotel, by agreement of the parties.

The issues were very well briefed and presented on behalf of both parties, their representatives cooperating with the panel and each other throughout the two days of hearing. A stenographic record of the proceedings was made, a transcript being furnished the panel and the Board.

ISSUES

The issues are:

1. (a) Maintenance of membership, (b), check-off of dues and initiation fees;
2. Management functions;
3. Maintenance of order;
4. Hours and overtime;
5. Seniority, Art. V;
6. Leave of absence for union activity;
7. Military service;
8. Wages;
9. Vacations;
10. Premium pay for night work;
11. Bulletin boards;
12. Grievance procedure;
13. Arbitration—selection of third arbitrator;
14. Adjustments, retroactivity;
15. Term of agreement;
16. Paid time for stewards;
17. Insurance; and
18. Quarterly bonus or extra compensation.

[ED. NOTE: Issues 1 through 4, discussed in the panel report at this point, are omitted.]

5. Seniority, Art. V

(See Art. V, p. 29, "Company Brief"; "Union Brief", p. 2; Trans. p. 75 to 113, and p. 233 to 254.)

Union's Position

With reference to Sec. 1, Art. V, which is in disagreement, the union contends that the only fair basis in matters affecting layoffs, reemployment, transfers, etc. is length of service and performance of the work in the normal manner. The union contends that the phrase "equal ability and aptitude" reduces the principle of seniority to a mere gesture and makes for discrimination.

Company's Position

The company contends that their proposal is a just and fair one; that comparative skill and aptitude can be fairly determined between two or more employees; that the union proposal of "ability to do the work in a normal manner" is vague and indefinite and impossible of determination.

The company points out that an employee would have resort to the grievance procedure should he feel discrimination has been practiced.

Findings and Recommendation

The panel unanimously recommends the adoption of Sec. 1, amended by inserting the word "relatively" before the word "equal" in the fourth line of the first sentence, making the phrase read "only if other factors of ability and aptitude are relatively equal."

Sec. 2 of Art. V is agreed upon by the parties with the exception of Subsection (d). (See p. 29, "Company Brief.")

The company proposes that seniority is to be broken "if the employee is laid off for six months."

The union insists on 12 months.

The panel unanimously recommends that the period of lay-off before seniority be broken be written as "12 months" instead of "6 months".

The parties are in agreement on Secs. 3 and 4 of Art. V.

Transfer (pp. 25 to 19 of Trans.): The question of transfers into and out of Department 6 is fully discussed in the transcript at the pages listed above. The issue is one involving accumulation of seniority and loss thereof, so properly belongs under Art. V. "Seniority."

The panel uanimously recommends that a new section be added by adopting the company's amended proposal submitted at the hearing, said new section of Art. V to read as follows:

"(a) Employees may be transferred from Department 6 to other departments in cases of (a) emergency and (b) lack of work in said Department 6, but in either case they shall not lose their seniority in Department 6 and shall be returned to Department 6 as soon as work is available for them.

"(b) No employees shall be transferred from other departments to Department 6 except (a) temporary transfers in cases of emergency or (b) when there are not sufficient regular employees in Department 6 available to perform the necessary work.

"Employees temporarily transferred from other departments to Depart-

ment 6 shall accumulate no seniority in Department 6."

[ED. NOTE: Issues 6 and 7, discussed in the panel report at this point, are omitted.]

8. Wages

(Transcript, page 235, page 264 et seq.; Company Brief, page 14 et seq.; also page 37, list of job classifications and description Department 6; page 40, job classification analysis for payroll period ending Jan. 2, 1941, Oct. 4, 1942, Apr. 9, 1944; also Company Exhibit D, a schedule of ranges applied for under Form 10, those approved by Board and those demanded by the union, and company Exhibit E.)

N. B.—Company submits five copies of errata of its brief, pages 38 and 39. See also union brief, page 3; Union Exhibits 3 and 4.

Union's Position

The union requests:

1. Rate ranges as set out on Exhibit 4, with single rates for certain classifications.

2. Automatic progression within labor grade or classification with three months step-up to mid range; thereafter on merit as applied by WLB in the Chance case and approved by WLB in Century Electric and Wagner Electric contracts.

3. Employees who have served required number of months to be automatically increased to top rate.

4. A provision to reopen wage clause in the event of change in governmental policy on wage increases.

Company's Position

The company contends that the wage ranges should be those set forth in the schedule, page 37, Company Brief, as they have been established and approved by the Board (RWLB Docket No. 7-6564, Oct. 7, 1943, also RWLB Docket No. 7-10437-1/26/44.) The company also contends that the employees have received a 44 per cent increase over the Jan. 1, 1941, level. (Appendix B, page 40.)

The company opposes the request of the union for a system of wage progression on the ground that, in conformity with WLB stabilization requirements, it has granted merit and seniority increases in accordance with the terms of NWLB General Order No. 31.

Findings and Recommendations

Inasmuch as the Little Steel formula appears to have been complied with and since there appears to be no inequities or inequalities and since the rates were established by the Board and may be within the sound and tested going rates and since the company may have granted all of the increases permitted by General Order No. 31, this panel unanimously recommends that the issue of rules and rate ranges be referred to the Board for determination.

This panel further unanimously recommends a system of automatic progression of five (5) cents per hour every three months to the mid-point of the rate range and thereafter increases to be by merit to be reviewed at least every three months. Those employees who have served required number of months to be automatically increased to the top rate.

The panel further recommends that a provision be included giving either party the right to reopen the wage question in the event the governmental wage policy changes.

[ED. NOTE: Issues 9 through 18, discussed in the panel report at this point, are omitted.]

Signed by John B. Sullivan, representing the public, with opinion; Joseph Cordia, representing labor; and Harry P. Sullivan, representing employers, subject to dissent, with opinion.

Opinion of Public Representative

VARIANCES IN THE REPORT

The panel report in this case, which was signed by the labor member on Aug. 22, and immediately sent to the industry member, has been returned on this day by the industry member unsigned but with a signed dissenting opinion attached. His dissenting opinion takes exception to most of the panel recommendations with a statement of the industry member's reason for dissenting.

For the clarification of the record and in justice to the labor member as well as the public member, this chairman is of the opinion that this report should contain the following observations by him:

1. That, at the panel conference called by the chairman on July 19, 1944, at a time and place agreeable to all parties, the industry member was in attendance, took part in the discussions and agreed to the recommendations on the various issues as con-

tained in the panel report signed by the labor member and the public member.

2. That, at no time during those discussions did he put forward the [arguments] contained in his dissenting opinions but in all instances assisted in drafting the various provisions, even to the extent of suggesting the substitution of one word for another. In other words, the industry member was very helpful to the chairman of this panel in drafting the provisions incorporated in this report.

3. That, as to the matter of bulletin boards * to which the dissenting opinion devotes more space than to any other subject, the panel spent less time on and the language used in the panel report was dictated by the industry member with the labor member in complete accord, and the chairman was convinced of the soundness of the recommendation. Had the industry member dissented at the conference, instead of suggesting the wording, such dissent would have been noted or, had any suggestions been put forward by him as safeguards, both the labor and public member would probably have adopted them as the panel was in complete unanimity on this subject and agreed that bulletin boards should be used for proper notices of meetings, and other notices should be approved by the company.

4. That, the industry member has had in his hands the panel report for more than two weeks; that the public member on several occasions called him by telephone for the purpose of urging attention to the report; that he was unable to contact the industry member but left messages at his office requesting him to call, which apparently were ignored; that at no time did the public member receive any inkling or indication that the report as written and submitted to the industry member was not in accord with his current frame of mind.

5. This chairman has never striven for complete agreement in any of the panels on which he has served. Rather, he has insisted on full discussion and welcomed dissents when an agreement could not be reached by all three members of the panel. He has encouraged both industry and labor members to make a statement of their position, often agreeing to the recommendation as well as in a dissent. This chairman has been convinced that such statements of position might be helpful to the Board and certainly valuable for future reference.

6. That, had the industry member put forward his dissents and arguments then, which he now puts forward as his, they would have been incorporated in the report, and the report would have carried the statement "That the majority of the panel, with the industry member dissenting" instead of the statement "The panel unanimously recommends."

7. That this chairman has no objection to any member of the panel changing his mind after the panel conference or even before signing the report. This chairman would gladly have changed wording of the recommendations, so as not to show a unanimous report, had the industry member extended the courtesy to the panel of notifying the majority that he had changed his mind or had he stated in his dissenting opinion that, since the panel conference, he felt it was his duty to dissent.

8. This chairman has no objection to the fact that there is now a dissenting opinion as such on the part of the industry member but is incorporating it as a part of the panel report and making it a part hereof. The statement of position of the public member with certain variances in the report is also incorporated in the panel report and made a part hereof, for purposes of clarifying the record.

Signed by John B. Sullivan, chairman, representing the public.

Dissenting Opinion of Employer Representative

I respectfully dissent from the proposed "Report and Recommendations," a draft of which has been handed me and which is forwarded herewith, my dissent being limited to the following points (the numbering and titling are those of the proposed "Report and Recommendations").

[ED. NOTE: Issues 1 through 4, discussed in the dissenting opinion at this point, are omitted.]

5. Seniority

I am opposed to the insertion of "relatively" in the phrase as recommended by the proposed "Report and Recommendations," to wit: "Only if other factors of ability and aptitude are relatively equal." If the word is

* ED. NOTE: Not reproduced.

intended to mean "comparatively," then I would use the latter word as being less susceptible of misunderstanding.

I would strike out the last paragraph of the matter under this heading, reading as follows: "Employees temporarily transferred from other departments to Department 6 shall accumulate no seniority in Department 6." This would seem an attempt to regulate seniority of employees not in the unit for they are there only as "temporary transfers."

[ED. NOTE: Issues 6 and 7, discussed at this point, are omitted.]

8. Wages

I am opposed to any automatic progression of $0.05 per hour every 3 months to mid-point of the range as proposed to be recommended in the second paragraph under this heading. The proposal that all "employees who have served required number of months to be automatically increased to the top rate" is objectionable and contrary to the provisions of wage stabilization. This proposal is more liberal than the terms of General Order 31, which the employer has been using here and under which all increase authority has been used.

[ED. NOTE: Issues 9, 10, 11, 12, 13, and 15, discussed at this point, are omitted.]

Signed by Harry P. Miller, representing employers.

ZEPHYR MFG. CO—

Decision of National Board

In re ZEPHYR MANUFACTURING COMPANY [Inglewood, Calif.] *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE 720 (AFL). Case No. 111-1112-D [10-D-682], June 6, 1945 (made public Aug. 7, 1945).

VACATIONS—Award of standard plan —Prorated vacation for years between one and five

As directed by Regional Board, employees are entitled to second week's vacation after five years of service, but Regional Board's order granting prorated vacations between one and five years is vacated.

For other rulings see Index-Digest 205.323 in this or other volumes.

JOB CLASSIFICATIONS — Review by union—New classifications

Regional Board order providing that company should grant union permission to review job classifications is modified to limit such review to "new" job classifications, where union's demands on this issue related to new classifications.

For other rulings see Index-Digest 75.330 in this or other volumes.

Majority decision of Board amending directive order of Regional Board X (San Francisco). Public members concurring: Lewis M. Gill and Jesse Freidin. Labor members dissenting on acceptance in part of company petition, modification of Regional Board's order on vacations, and on Par. I-B: Robert J. Watt and Neil Brant.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted in part the petition for review filed by the company in the above entitled case and having reviewed the merits of the case with respect to the issues involving job classifications and vacations, hereby decides the dispute between the parties and orders:

I. The terms and conditions of employment set forth in the Tenth Regional War Labor Board's directive order of Mar. 8, 1945, in this case shall govern the relations between the parties, with the following modifications:

(A) Vacation Pay

The provisions of the said directive order with respect to prorating vacations for service between one and five years are hereby vacated. In all other respects the Regional Board's order on this issue is affirmed.

(B) New classifications

The provision of the said directive order with respect to this issue is modified to read as follows:

"Art. XIX of the agreement (Review of Wage Structure) shall be amended to include permission by the company

to the union to review new job classifications."

II. That part of the petition for review which relates to overtime for the sixth consecutive day is denied on the understanding that the sixth day referred to in the Rgional Board's order is the sixth day worked in the regularly scheduled workweek as permitted by Executive Order 9240.

III. Subject to the foregoing provisions, the terms and conditions of employment set forth in the Tenth Regional War Labor Board's directive order of Mar. 8, 1945, shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Directive Order of Regional Board X (San Francisco)

Mar. 8, 1945

I. The Regional War Labor Board for the Tenth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

A. Wage Rates

The following wage rates based upon the use of the Southern California Aircraft Industry job descriptions shall be included in the agreement to be signed by the parties:

Classification	Rate Range
Grinder	
A	$1.10-$1.25
B	.95- 1.05
C	.85- .95
Screw Machine Operator	
A	1.10- 1.25
B	.95- 1.05
C	.85- .95
Engine Lathe Operator	
A	1.10- 1.25
B	.95- 1.05
C	.85- .95
Milling Machine Operator	
A	$1.10- 1.25
B	.95- 1.05
C	.85- .95
Turret Lathe Operator	
A	1.10- 1.25
B	.95- 1.05
C	.85- .95
Drill Press Operator	
A	.95- 1.05
B	.85- .95
Buffer Polisher	
A	.95- 1.05
B	.85- .95
Sander & Deburrer	
A	.75- .80
Tool & Die Maker	
A	1.25- 1.45
B	1.10- 1.25
C	.95- 1.05
Maintenance Man Machinist & Electrician	
A	1.20- 1.35
B	1.05- 1.20
C	.90- 1.00
Carpenter & Painter	
A	1.05- 1.20
Assembly	
A	1.05- 1.20
B	.90- 1.00
Inspector	
A	1.20- 1.35
B	1.05- 1.20
Marking Machine Operator	
A	.75- .95
Heat Treating Steel	
A	1.20- 1.35
B	1.05- 1.20
C	.90- 1.00
Tool Crib Attendant	.90- 1.00
Truck Driver	.95- 1.05
Janitor	.75- .80
Watchman & Guard	.75- .85
Stock Clerk— Shipping and Receiving	.95- 1.10
Welder	
A	1.20- 1.35
B	1.05- 1.20

B. Overtime

All employees shall be paid at the rate of time and one-half for work performed in excess of eight hours in any one day, for the sixth consecutive day, or over forty (40) hours in any 1 week, and shall be paid doubletime

for work performed on the seventh consecutive day.

C. Call and Report Time

Employees who report for work at the time they are instructed by employer or employer's agents to report and who are not given work at that time shall be paid four (4) hours pay, except where men are not put to work by reason of bad weather, breakdown of machinery, or any other condition beyond the direct control of the employer. Reporting pay on Saturdays, Sundays, or holidays shall be computed on the basis of the prescribed overtime rates.

Employees who start work on any shift shall receive not less than four (4) hours pay for such shift unless they voluntarily quit or lay off or are laid off by reason of bad weather, breakdown of machinery, or any other condition beyond the direct control of the employer.

D. Holidays

The request of the union for payment of six holidays not worked is hereby denied.

E. Vacation Pay

The union's request for a combination vacation and sick leave plan is hereby denied.

The company's present vacation plan shall be extended to make provision for the following vacation allowance:

Years of Service	Time Off	Vacation Pay
1 Year	1 Week	1/52 of Individual Earnings, Including Overtime, for the Preceding 52 Weeks.
2 Years	1¼ Weeks	1¼/52 of Individual Earnings, Including Overtime, for the Preceding 52 Weeks.
3 Years	1½ Weeks	1½/52 of Individual Earnings, Including Overtime, for the Preceding 52 Weeks.
4 Years	1¾ Weeks	1¾/52 of Individual Earnings, Including Overtime, for the Preceding 52 Weeks.
5 Years	2 Weeks	2/52 of Individual Earnings, Including Overtime, for the Preceding 52 Weeks.

F. Paid Rest Periods

There shall be a rest period in all shifts in excess of eight hours designated as follows:

Fifteen minutes midway before and after lunch for all female employees; 10 minutes midway before and after lunch for all male employees.

G. Paid Accident Leave

The union's request for accident payments for the seven days pending compensation payments is hereby denied.

H. Inventions

The following agreed upon clause shall be included in the agreement to be signed by the parties:

"It will be the policy of the Company to permit employees under this agreement to retain ownership of the inventions made during the course of employment. Shop rights which the Company may have are not waived by this agreement.

"The term 'shop rights' as used in this agreement means the right of the employer to receive from the employee free license to manufacture the invention for Company's disposition."

I. New Classification

Art. XIX of the agreement (Review of Wage Structure) shall be amended to include permission by the company to the union to review job classifications.

J. Effective Date

The foregoing provisions shall be effective as of Sept. 27, 1944, and the procedure for making retroactive wage payments shall be in accordance with the Resolution of the National War Labor Board dated April 2, 1943 [26 War Lab. Rep. 3].

Nothing in this order shall be construed as constituting approval of any wage payment in contravention of the Wage Stabilization Act of Oct. 2, 1942, or any of the orders, regulations or directives issued thereunder.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the inten-

tion of the parties to have their relations governed thereby, as ordered by the Regional War Labor Board.

III. The provisions of this order shall become operative as the order of the National War Labor Board fourteen (14) days after the date of issuance unless within such fourteen (14) days either party files a petition for National Board review of the order with the Tenth Regional War Labor Board in the manner prescribed in the summary of procedure.

Either party may petition the Regional Board to make effective immediately according to its terms those provisions of the directive order on which review has not been sought or the parties may mutually agree upon the date when the order or any part thereof shall take effect, except that where a wage or salary adjustment is made subject to the approval of the Director of Economic Stabilization, the parties may not by their agreement make such adjustment effective prior to the date of such approval. Notwithstanding any other provision of this paragraph, that part of a directive order which continues in effect the terms and conditions of a prior contract which has expired or been otherwise terminated shall not be suspended or stayed by the filing of a petition for review but shall become effective according to its terms unless and until the National Board upon consideration of a petition for review otherwise directs.

Either party may, within seven (7) days of the date of issuance of the directive order, file with the Regional Board, in accordance with the summary of procedures, a petition for Regional reconsideration. The filing of such a petition shall not, unless the Regional Board otherwise directs, stay or suspend the operation of the order nor shall it extend the time within which a party may petition for review.

Signed by Thomas Fair Neblett and Edgar H. Rowe, public members, Mr. Rowe dissenting on vacation issue; Dwight C. Steele and William B. Tyler, employer members, Mr. Tyler dissenting on issues of overtime for sixth day, vacation pay, paid rest periods, new classifications, and effective date (with opinion); and Harry Lea and Wendell Phillips, labor members, Mr. Phillips dissenting on issues of holidays and paid accident leave (with opinion).

Concurring Opinion of Labor Member

Mar. 5, 1945

PHILLIPS, Labor Member:—The union in this case requested 12 days per year vacation and/or sick leave pay. The record shows that such a provision is the prevailing practice in the aircraft industry, of which this company has been considered to be a part. Its wage structure is based upon rates paid in [the] airframe [industry] and were approved by this Board on that basis. The provision provides for 12 days vacation per year but permits a portion of this amount to be taken as sick leave. A majority of the Board refused to order any provision that would include paid sick leave but did order vacation pay in the exact amount that would be approvable in a voluntary application without any showing of more liberal industry or area practice. This decision was clearly within the demands of the union on this issue and is followed by the Wage Stabilization Division in granting modified approval where a more liberal vacation plan is not shown to be industry or area practice. The order includes computation of vacation pay on the basis of annual earnings because the record is clear that this method of payment was in effect in this company prior to wage stabilization.

Dissenting Opinion of Employer Members

Feb. 28, 1945

TYLER, STEELE, and HALL, Employer Members:—This dissent concerns only the issue of vacation and vacation pay.

VACATION AND VACATION PAY

Present Practice

One week's vacation after one year of service computed at 1/52 of the total earnings (including overtime) for the preceding 52 weeks.

Union Demand

"Combination" vacation and sick leave at the rate of 1 day per month or 12 paid days per year after 1 year's service.

Board Action

The majority by a 5-4 vote (industry and public member Rowe dissenting) denied sick leave pay but granted va-

cation of 2 weeks after 5 years service, with pay at rate of 2/52 of the total earnings (including overtime) for the preceding 52 weeks.

The Board (industry dissenting) also granted a pro-rate of vacation between 1 and 5 years service; viz., 7½ days after 2 years; 9 days after 3 years and 10½ days after 4 years.

Reasons for Dissent

1. This employer manufactures tools for the aircraft industry. It is not, however, a part of the aircraft industry even though it is true that its wage rates are those of the aircraft industry.

The Wage Stabilization Director of this Regional Board states, without any qualification:

"At present, this company, a manufacturer of aircraft tools would not be included in the aircraft industry."

Therefore, the action of the Board in denying sick leave was correct and in accordance with wage stabilization principles.

2. The award of this Regional Board exceeded the demand of the union. The demand was for one week of sick leave after one year, with the right of the employee to use the sick leave for vacation or the vacation leave (now enjoyed) for sickness. The Board correctly denied sick leave but erred in granting a second week's vacation after five years and a prorate thereof in intervening years which was not sought by the union and was not in issue in the case either before the panel or this Regional Board.

3. Even should the National Board sustain this Regional Board on the vacation award as such, the Regional Board erred and the National Board should not sustain the payment provision for the second week's vacation which is based upon total earnings of the employee, including all overtime and extra pay of every nature.

4. Under current wage stabilization policies and practices of the War Labor Board, the Regional Board should be reversed on the vacation award in this case because:

(a) In a dispute case, two weeks vacation after five years was granted although not an issue in the case and not demanded by the union, and

(b) Vacation pay was excessive, in that the award calls for pay based upon total earnings, not straight-time earnings as is customary in such cases.

(c) The pro-rate of vacation allowance after the second, third, and forth year of employment is a new "wrinkle" which has been embraced by this Regional Board on the basis of an interchange of wires with Messrs. Kheel and Daugherty. If the National Board has adopted such a policy it should be publicized forthwith and give official sanction. Certainly, however, such pro-rate is not warranted in this case for the reasons stated in 4(a) above.

Report and Recommendations of the Panel *

PRELIMINARY REMARKS

The Zephyr Mfg. Co. is a partnership composed of Messrs. Jay Harkey, H. L. Trautman, and D. L. Dotson, with offices and plant located at 201 Hindry Ave., Inglewood, Calif. This is the company's only plant, engaged practically 100 per cent in the manufacture of tools for the aircraft industry. The International Association of Machinists, AFL, union was certified by NLRB as bargaining agent on Feb. 26, 1944. The company had about 76 employees at date of certification and now has 62 of which 27 are involved in this dispute.

Negotiations were started immediately after the NLRB election, and, after failure to reach an agreement, Commissioner Harry C. Malcolm was assigned to the case on Mar. 9, 1944. Several joint conferences were conducted between Apr. 1 and Aug. 17, 1944, resulting in agreement on 20 issues. On Sept. 27, 1944, the following nine issues, remaining unresolved, were certified to NWLB:

(1) Rates of pay;
(2) Overtime;
(3) Call and report time;
(4) Holidays;
(5) Vacation pay;
(6) Rest periods;
(7) Paid sick leave;
(8) Inventions (resolved—see preliminary report); and
(9) New work classifications.

[ED. NOTE: Issues 1 through 4, discussed in the panel report at this point, are omitted.]

5. Vacation Pay

Union's Position

The union proposes a combination vacation and sick leave plan at the

* ED. NOTE: Only that portion of the panel report relating to vacations and new work classifications is reproduced.

rate of one day per month. The period of accumulated vacation and sick leave to be the anniversary date of hire.

The union submits (Union Brief, pp. 13-14) that a combination vacation and sick leave provision has been in effect in the airframe industry for several years.

Company's Position

Since May 1942, the company has granted one week's vacation with pay to all employees who have completed one year of service, computed at one fifty-second (1/52nd) of the individual earnings, including overtime, for the preceding 52 weeks.

The company contends there is no need for inclusion of paid sick leave as this contingency has been covered since February 1942 by group accident and sickness policies (Company Exhibit C).

The company further states that, due to the fact that it was engaged in the manufacture of tools which were sold to aircraft manufacturers, it did not of necessity mean that the practice followed in the airframe industry would be applicable in the employer's operations.

Findings of Fact

The panel is unanimous in its opinion that the facts do not support the request for inclusion of sick leave in combination with vacation policy because (1) there is virtually no precedent in Board decisions for awarding sick leave benefits; and (2) the company already has a vacation plan in combination with the group insurance program.

In rejecting the union's demand, the panel wishes to call attention that, although the request did not specifically include provision for more than one year's service, it is unanimously in accord that it is reasonable and fair that employees with five years' service should receive more vacation allowance than that granted employees with less service. The panel, therefore, presents for the Board's consideration the suggestion that the vacation plan now in effect by the company be extended to grant 2/52 of the employee's preceding annual earnings after 5 years' service with the company.

[Ed. Note: Issues 6 through 8, discussed in the panel report at this point, are omitted.]

9. New Classifications

Union's Position

The union proposes the following clause:

"Upon the introduction of any new machine or type of work into the plant of the Company or any work now in the plant not classified, the Union and the Company jointly, by representatives of equal numbers, shall determine by agreement as to what classification of work and rate or pay it shall be placed under. Classifications and rates of pay so determined shall not conflict with the main agreement and shall not be less than the same type or similar type of work in any other shop of the Company. In the event of failure to agree, the matter shall be taken up through the grievance procedure provided by this agreement."

The union's contention is the clause will prevent grievances.

Company's Position

The company objects to being bound to this proposal stating that, if any new job classifications developed which could not be agreed upon, applications for approval would be made to the War Labor Board, provided the particular case could not be settled through the established grievance procedure. Classification is essentially management's function.

Findings and Recommendation

Since this is the first contract to be negotiated between the parties and no facts were given during the hearing by either party which indicated [that] any significant cases have been encountered in job classifications, it is the panel's unanimous decision that, in order to promote good labor relations or until other necessity demands, an amendment be added to "Art. XIX, Review of Wage Structure" (Union Exhibit 1, p. 6) including permission by the company to the union to review job classifications.

Signed by W. R. Montgomery, representing the public; Bryant Essick, representing employers; and Frank Hatfield, representing labor, subject to dissent on Issue 4, paid holidays.

Dissenting Opinion of Labor Representative

HOLIDAYS WITH PAY

The majority of the panel has refused to grant the union's proposal

that eight hours' pay be granted for six holidays not worked. The bases for the panel's decision are that the industry practice does not justify the inclusion of such a provision.

It should be noted, that neither the panel nor the company has produced one shred of evidence as to the practice in the industry. In contrast, the union has presented an exhibit dealing with well over 10,000 employees now receiving pay for six or more holidays not worked. To this number could be added many thousands more in neighboring towns such as Long Beach, San Pedro, Santa Ana, Ontario, Corona, etc.

In addition to the evidence produced by the union, the labor panel member knows of several thousand other industrial workers who are receiving holidays with pay. According to the Aeronautical Lodge of the International Association of Machinists, a majority of the members of the Aircraft Parts Association pay their employees for holidays not worked. In southern California, Lockheed Aircraft Co., Rohr Aircraft, Vega Aircraft, and Consolidated-Vultee grant pay for holidays not worked as does Boeing in Seattle. At the various Douglas Aircraft plants in and around Los Angeles, the practice of the company heretofore has been to work on all holidays except Christmas. On Christmas, the holiday which is not worked, eight hours' pay is granted to all employees, production and clerical. The Douglas Aircraft Corporation, anticipating the possibility of not operating in the future on certain other holidays, is presently seeking this approval of the War Labor Board to grant pay on other holidays not worked in accordance with the practice in other aircraft plants. The labor panel member has only had time to make a hasty compilation of information from a few unions. Yet evidence that many thousands of employees receive pay for holidays not worked has been adduced. I believe the unsupported statement of the panel majority that the granting of holidays with pay is not common practice in the industry has been completely refuted.

In addition, it should be remembered that the wage stabilization program is founded on the purchasing power theory of inflation. The War Labor Board has sought to control and hold down increases in wage rates in order to prevent an expansion of purchasing power leading to the inflation in prices of consumer goods. In a situation where it is possible and in fact likely that these employees will work all or most of their holidays and receive pay at the rate of time and one-half, it is difficult to see where provision for a few days off with straight-time pay will cause an increase in annual wages and consequent inflation of purchasing power.

In summary, the labor member feels that holidays with pay should be approved on the basis of Regional and National Board decisions granting such a measure where, as in this case, the following conditions prevail:

1. A vast number of employees in the area have been shown by the union or labor member to be receiving holiday benefits at least equal to those proposed by the union;
2. There exists a substantial uniformity of such provisions in union contracts in the aircraft parts industry;
3. Reasonable employee benefits of this kind are not regarded by the Board as wage increases; and
4. No evidence has been offered by the company or panel to contradict the contentions of the union as to industry practice.

Signed by Frank A. Hatfield, representing labor.

ELLIS-KLATSCHER CO.—

Decision of National Board

In re ELLIS-KLATSCHER COMPANY [Los Angeles, Calif.] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, GENERAL WAREHOUSEMEN'S UNION, LOCAL 598 (AFL). Case No. 111-9922-D, June 14, 1945 (made public Aug. 7, 1945).

Amending 21 War Lab. Rep. 485.

PREFERENTIAL HIRING—Preferential hiring in addition to maintenance of membership—

Union whose membership was "wholly dissipated" by unfair labor practices of company is not entitled

to award of preferential hiring in addition to maintenance of membership to restore union's representative status. Regional Board's order directing both maintenance of membership and preferential shop is modified by elimination of preferential-hiring clause.

For other rulings see Index-Digest 135.220 and 110.126 in this or other volumes.

Majority decision of Board amending directive order of Regional Board X (San Francisco). Public members concurring: Dexter M. Keezer, Lewis M. Gill, and Jesse Freidin. Employer members concurring: Earl Cannon, Frederick S. Fales, and William Maloney. Labor members dissenting: Elmer E. Walker, Robert J. Watt, and Carl J. Shipley.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition filed by the company for review of the directive order dated Dec. 22, 1944 [21 War Lab. Rep. 485], of the Regional War Labor Board for the Tenth Region issued in the above entitled case and having reviewed the merits of the case, hereby decides the dispute between the parties and orders:

I. The terms and conditions of employment set forth in the Tenth Regional War Labor Board's directive order of Dec. 22, 1944, in this case shall govern the relations between the parties, with the following modification:

A. Preferential Hiring: Par. IB of the said directive order which relates to this issue is hereby vacated.

II. The terms and conditions of employment in said directive order of Dec. 22, 1944, as herein modified, shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

PETTIBONE MULLIKEN CORP.—

Decision of National Board

In re PETTIBONE MULLIKEN CORPORATION [Chicago, Ill.] *and* INTERNATIONAL MOLDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL 233 (AFL). Case No. 111-5387-D, June 5, 1945 (made public Aug. 7, 1945).

Amending 24 War Lab. Rep. 625.

WAGE ADJUSTMENTS—Retroactive date—Rare and unusual cases

Wage adjustments directed by Regional Board on basis of area foundry rates established pursuant to "rare and unusual" proceedings should be made retroactive to same date as were rates in "rare and unusual" cases. Board's prior order making instant adjustments retroactive only to date on which "rare and unusual" rates were approved by Regional Board is amended accordingly.

For other rulings see Index-Digest 225.364 in this or other volumes.

Majority decision of Board amending prior directive order. Public members concurring: Edwin E. Witte and Lewis M. Gill. Employer members concurring: Earl Cannon and Lee H. Hill. Labor members dissenting: Elmer E. Walker and Van Bittner.

Directive Order No. II

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having on its own motion reconsidered that part of directive order No. I dated Mar. 20, 1945 [24 War Lab. Rep. 625], which relates to retroactivity of the ordered general wage increase, hereby takes the following action:

Part I, Par. A of the National War Labor Board's directive order No. I dated Mar. 20, 1945, is modified to provide that the wage increases referred to therein shall be effective as of Dec. 27, 1943.*

ED. NOTE: The date ordered by the Board is the retroactive date ordered by the National Board in the Chicago Foundrymen's Association case (18 War Lab. Rep. 122), in which wage adjustments were granted in the common labor rate in 37 grey iron foundries un-

PARAFFINE COS.—

Decision of National Board

In re PARAFFINE COMPANIES, INC. Emeryville, Calif.] *and* INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 1-6 (CIO). Case No. 111-6557-D, May 21, 1945 (made public Aug. 1, 1945).

UNION AFFAIRS—Posting notices on bulletin board — Company approval of notices

Union is entitled to post official notices on company-furnished bulletin board after notices have been approved by plant personnel department, as provided in prior contract. Union is not entitled, however, to post notices unapproved by company, as was provided by Regional Board, where company claimed prior provision is part of all contracts between it and other unions and no claim was made that company ever abused its discretion.

For other rulings see Index-Digest 172.400 in this or other volumes.

PREMIUM WAGE RATES—Pay for six holidays not worked—Industry-area practice

Employees are not entitled to straight-time pay on six annual holidays not worked, as ordered by Regional Board, where company contends that there is complete lack of industry, area, or company practice to support such order.

For other rulings see Index-Digest 140.278 in this or other volumes.

Majority decision of Board amending decision of Regional Board X (San Francisco). Public members concurring: Lloyd K. Garrison and Lewis M. Gill. Labor members dissenting on Par. I: Carl J. Shipley and Elmer E. Walker. Employer members dissenting on Par. II: Vincent P. Ahearn and William Maloney.

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der the Board's "rare and unusual" criterion. Originally the NWLB had ordered a later retroactive date, namely, the date on which the Regional Board in Chicago had decided the Chicago Foundrymen's Association case (24 War Lab. Rep. 625).

Both the company and the union appealed the Board's decision at 24 War Lab. Rep. 625. The union claimed that the retroactive date which had been set by the Board as Feb. 3, 1944, should have been the earlier date of Aug. 31, 1943, the date agreed on by the parties.

The company, however, stated that it had not agreed to any retroactivity and claimed that the retroactive date should be the date on which the National Board had acted on the Regional Board's decision in the Chicago Foundrymen's case, namely, July 31, 1944.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted in part the petition for review filed by the company in the above entitled case and having reviewed the merits of the case with respect to bulletin board and holiday pay, hereby orders:

I. The terms and conditions of employment set forth in the Tenth Regional War Labor Board's directive order of Nov. 14, 1944, shall govern the relations between the parties, with the following modifications:

(A) Holiday Pay

Par. I (E) of the said directive order is hereby vacated.

(B) Bulletin Board

The clause agreed upon by the parties in their last contract is reinstated, and Par. I (F) of the said directive order is amended to read as follows:

"The company shall erect a bulletin board for the use of the union in posting officially signed notices, such notices to have the approval of the plant personnel department."

II. Those parts of the petition which relate to unfair procedure and night-shift bonus are hereby denied.

III. The request for an oral hearing is denied.

*Directive Order of Regional Board X (San Francisco)**

Nov. 14, 1944

I. The Regional War Labor Board for the Tenth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of em-

* Issued Nov. 22, 1944.

ployment shall govern the relations between the parties:

A. Sickness and Accident Benefits

The union's request for sickness and accident benefits is hereby denied.

B. Severance Pay

The union's request for severance pay is hereby denied.

C. Vacations

Vacations with pay shall be granted to paid hourly employees on the following basis:

(1) Employees having completed one year's service at any date during the calendar year will be granted after that date:

One week's vacation with pay at the straight-time hourly rate computed on the basis of the regularly scheduled workweek, but in no event less than forty (40) nor more than forty-eight (48) hours' pay.

(2) Employees having completed two years' service at any date during the calendar year will be granted after that date:

Two weeks' vacation with pay at the straight-time hourly rate, computed on the basis of the regularly scheduled workweek but in no event less than eighty (80) nor more than ninety-six (96) hours' pay.

(3) (a) Service as referred to above shall mean continuous employment. An employee must complete six months' continuous service (without layoff) before he becomes eligible for a vacation at the end of one year.

(b) When an employee is granted a leave of absence or is laid off due to lack of work, layoff to be not more than six months, such absence or layoff shall not break continuity of employment. Leave of absence or layoff is to be counted as service time.

(c) Choice of vacation time will be by mutual agreement between the individual and the department head.

(d) For as long as the company and the union agree that it is necessary, employees may continue to work in the plant during their vacation period and receive vacation pay due them for the same period.

Any employee may take his vacation or work his vacation as he so desires. If an employee has two weeks' vacation coming he may elect to take one week as vacation and work the other week.

(e) Employees must report to the personnel department to fill out the required vacation cards at least three days before leaving on vacation.

(f) An employee will secure his vacation pay upon leaving and will receive his regular earnings on the payday following his return.

(g) The rate of pay for a paid vacation will be the regular rate that the employee is receiving at the time his vacation is taken.

(h) When an employee leaves the services of the company he shall receive his vacation pay if due—except for the following reasons:

1. Discharge for drunkness, theft, insubordination, sabotage, or smoking in prohibited area.

2. Failure to give notice.

D. Night-Shift Differential

If employees are required to work between the hours of 3:00 p.m. and 8:00 a.m., they shall receive a differential of five (5) cents per hour for the second shift (between 3:00 p.m. and 12 midnight) and ten (10) cents per hour for the third shift (between 11:00 p.m. and 8:00 a.m.) irrespective of whether the shifts are fixed or rotating.

E. Holiday Pay

The existing provision concerning holidays shall be supplemented as follows:

"Employees shall be paid at straight-time rates for the following holidays, when not worked: New Year's Day, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

"It is agreed that an employee, if ordered to report for work on a holiday, must report for work or he will not get the holiday pay provided for in the agreement."

F. Bulletin Board

The following provisions shall be substituted for the existing provision concerning bulletin boards.

"The Company shall erect bulletin boards for the Union in posting officially signed notices."

G. Effective Date

The above provisions with respect to vacations, shift differentials, and paid holidays shall be effective as of July 1, 1943, and the procedure for making retroactive wage payments shall be in accordance with the resolution of the National War Labor Board

dated April 2, 1943 [26 War Lab. Rep. 3; WCDS 395].

Nothing in this order shall be construed as constituting approval of any wage payment made in contravention of the Wage Stabilization Act of Oct. 2, 1942, or any of the orders, regulations, or directives issued thereunder.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the Regional War Labor Board.

III. If it is the intention of the company to seek price relief, pursuant to Executive Orders No. 9250 and 9328, as supplemented by the directive of May 12, 1943 the wage increases granted herein shall become effective only upon determination by the Office of Price Administration that the wage increase ordered in this directive order will not require any change in price ceilings or, if no such determination is made, then upon approval by the Director of Economic Stabilization. The company shall notify the Regional War Labor Board of its intentions, and the parties will be promptly notified of the action of the Office of Price Administration or the Director of Economic Stabilization.

As provided in Sec. 802.40 of the "Rules of Organization and Procedures of the National War Labor Board," this order is subject to review by the National War Labor Board at any time on its own motion.

IV. The provisions of this order shall become operative as the order of the National War Labor Board fourteen (14) days after the date of issuance unless within such fourteen (14) days either party files a petition for National Board review of the order with the Tenth Regional War Labor Board in the manner prescribed in the "Summary of Procedures."

Either party may petition the Regional Board to make effective immediately according to its terms those provisions of the directive order on which review has not been sought, or the parties may mutually agree upon the date when the order, or any part thereof shall take effect, except that, where a wage or salary adjustment is made subject to the approval of the Director of Economic Stabilization, the parties may not by their agreement make such adjustment effective prior to the date of such approval. Notwithstanding any other provision of this paragraph, that part of a directive order which continues in effect the terms and conditions of a prior contract which has expired or been otherwise terminated shall not be suspended or stayed by the filing of a petition for review, but shall be effective according to its terms unless and until the National Board, upon consideration of a petition for review, otherwise directs.

Either party may, within seven (7) days of the date of issuance of the directive order, file with the Regional Board, in accordance with the "Summary of Procedures," a petition for Regional reconsideration. The filing of such a petition shall not, unless the Regional Board otherwise directs, stay or suspend the operation of the order nor shall it extend the time within which a party may petition for review.

Signed by Arthur C. Miller, Judge M. C. Sloss, and J. A. C. Grant, public members, Mr. Grant subject to dissent on holiday pay; Joseph D. Sullivan (opinion), John D. Thomas, and Harry Hanson, employer members, Mr. Hanson subject to dissent on vacations, holiday pay, bulletin board, and effective date; and Arnold F. Campo (opinion), Ed Hall, and Wendell Phillips, labor members, Mr. Phillips subject to dissent on sick benefits, severance pay, and night-shift differentials.

Opinion of the Board

Dec. 12, 1944

SHIFT DIFFERENTIALS

GRANT, Public Member:—This opinion is written to explain the reasons that led the public members to support the motion on shift differentials that appeared in the directive order of Nov. 14, 1944. It is necessary because the opinion filed by the industry members, who also voted for this motion (although they later sought its reconsideration) attacks the granting of a differential not only for rotating shifts, as we had anticipated, but for fixed shifts as well.

This extreme position of the industry members comes as a surprise, as even the company had abandoned this view. In its "Supplementary Statement" of Oct. 30, 1944, the company discussed the results of its negotia-

tions with the 14 other bargaining units in this plant and pointed out that, in several instances, voluntary applications have been filed for approval of a 5-cent differential for swing shift and a 10-cent differential for the graveyard shift. It states that these "agreements are the result of negotiations with all of said labor organizations in which the company offered to them the alternative of either a rule requiring rotating shifts with no night-shift differential or * * * fixed shifts with the night differentials specified" above. This constitutes an abandonment of its prior position that the rates themselves had been set in such a way as adequately to compensate for shift work, a position which this Board has found to be unsound. As the Wage Stabilization Division reported to the Board, "The present rates are comparable to but not much higher than prevailing rates for the same job in the San Francisco region; there is no indication that compensation for the inconvenience of night work, fixed or rotating shift, has been bargained into the present rate structure."

The issue narrows down, then, to the simple one: Does the fact that, as to the instant employees, the shift rotation militates against directing the same shift premiums that would be ordered if the shift were fixed? The answer seems so obvious to us that we will not labor the point. All of the reasons that have led the Board to order or to approve shift differentials for fixed shifts apply equally to rotating shifts. True, instances in which the rate structure itself includes compensation for shift work occur more frequently as to rotating than as to fixed shifts; and it is this factual pattern, rather than any inherent question of justice as between the two types of shift work, that has led the Board to examine requests for differentials for rotating shifts with a more jealous eye. We have, however, found against such a claim here.

To the public members, the real issue is only as to the proper amount to be directed for the evening and night shifts. The panel majority recommended full approval of the Union's request, but made no real finding as to area practice or other basis for the recommendation. As the Wage Stabilization Division's memorandum pointed out, the differentials requested by the union "correspond to area practice in metal trades industries; there is no practice for roofing manufacturing industry for the San Francisco area." Only by assuming that the metal practice should be imposed upon industry in general in this area can the union's request be sustained. It seems to us to be far more reasonable to conclude that, in the absence of any practice in the industry concerned or of any general acceptance of the metal trades differential in other industries, it is the duty of the Board, in the exercise of its sound discretion, to order a reasonable differential. After considering all of the factors involved, including the high differentials paid in metal trades industries, we have concluded that the premiums ordered fulfill this duty.

Dissenting Opinion of Employer Members

NIGHT SHIFT DIFFERENTIAL

SULLIVAN, Employer Member:—I dissent from the procedure in this case. In its exceptions to the panel report, the company requested a public hearing. Without notice to the company, the case was disposed of without hearing after considering the report of an analyst. The refusal of a public hearing followed the adoption of a rule of the Regional Board that public hearings would be granted only in exceptional cases. But the company had no notice of the rule and no opportunity to demonstrate that its case was exceptional. Furthermore, the company did not receive copies of additional evidence considered by the Board, to wit, the analyst's report, and, therefore, was not given a full or adequate hearing. In my opinion, this case is an exceptional one which merited a public hearing and, in any case, the interested parties are in my opinion entitled to be furnished with all information to be considered by the Board and [should be] afforded an opportunity to be heard thereon.

I dissent from the Board action refusing reconsideration of its directive order on the subject of night work differentials. As one of the industry members, I concurred in the original action of the Board approving the shift differentials prescribed in its directive order, but, on further consideration, I expressed the desire to record a negative vote and for that purpose moved for reconsideration before the directive order was issued. That motion was denied.

My reasons for moving to reconsider the night-shift differentials prescribed

by the directive order are the following:

The record in the proceeding before the panel demonstrates that there does not exist a single factor supporting the night-shift differentials as directed;

1. The company's operations have always been continuous on a three-shift basis and are of a character requiring it;

2. War conditions have not changed the character of continuous operations;

3. Wage rates were originally established with the factor of night-shift work incorporated in the rate structure. (The testimony of the employer to that effect is undisputed);

4. Night-shift work has been the subject of collective bargaining between the parties to this dispute, and their agreement provides for continuous operations and night-shift work and provide specific allowances therefor, thus confirming the evidence that the night-shift differential was incorporated in the prevailing wage structure;

5. The undisputed evidence supported by National Board decisions shows that night-shift differentials do not prevail in the industry (see Armstrong Cork Company, 10 War Lab. Rep. 301, and Flintkote Company, 9 War Lab. Rep. 820, cases involving national competitors of the Paraffine Companies);

6. There is no area practice in the industry supporting night-shift differentials. The sole evidence offered by the union is based upon a night-shift differential in certain East Bay paint factories (15 East Bay factories, 4 War Lab. Rep. 47). Statements in that decision show its inapplicability to Paraffine. Apart from the fact that paint is not produced in the department of Paraffine involved in this case, it merely demonstrates that a night-shift differential cannot be justified at Paraffine; for the paint makers' union which bargained with the East Bay paint factories for a night-shift differential has just made another agreement with Paraffine excluding night-shift differentials because this factor was bargained into the higher rate structure of Paraffine;

7. In a companion case to which Paraffine was the party involving the Printing Specialties and Paper Converters' Union, the panel report rejected the night-shift differential proposals on a series of carefully considered findings which fully supported the position of the company on every pertinent consideration; and

8. The company has a bargaining agreement with 13 other labor organizations and has within the past few weeks consummated collective bargaining agreements with each of them. In none of them is a night-shift differential required for shift work on a rotating basis. To disrupt plant operations and destroy uniformity by departing from the plant practice concurred in by numerous unions is not in accord with Board policy which favors uniformity and stabilization.

I can find nothing in the evidence of this case to justify the introduction of night-shift differentiaals in the company's agreement.

PAID HOLIDAYS

In dissenting from the provision of the directive order giving pay to the employees for holidays not worked, I wish to adopt the dissent opinions of my associates in Holly Sugar Corporation v. United Sugar Workers (Case No. 111-2739 [18 War Lab. Rep. 535]), and in that of Blue Bird Potato Chips, Inc., and ILWU (Case No. 111-5941 [20 War Lab. Rep. 18]), both of which have been reversed by the National Board.

But, in addition to the reasons assigned by industrial members in those cases for opposing the holiday pay rule, I wish to add the special consideration in this case.

Again, reference is made to numerous collective bargaining agreements just executed by the company and numerous labor organizations in no one of which is such a rule incorporated. Thus, in ordering holiday pay, the Board has not only departed from industry practice (and there is none in this case) and from area practice (and there is no evidence of area practice in this case), but it has also departed from company and plant practice long accepted and just ratified by numerous labor organizations. The holiday provision of the order can only serve, therefore, to disturb a plant-wide wage structure based upon numerous collective bargaining agreements and thus introduce in the plant industrial relations discord and dissatisfaction that has not heretofore existed. Such a rule will create inequities that have not heretofore existed.

Under the guise of a new working condition, this order would add ap-

proximately two per cent to the annual earnings of the members of this union in violation of wage stabilization rules, and it is a wage increase and nothing else, for the members of the union will, after the order becomes effective, perform exactly the same work at exactly the same hours and under exactly the same conditions but with higher earnings than those of the majority of employees in the plant represented by other unions.

The panel report concedes that the wage rates and conditions which prevail in this company's plant are more favorable than those in competitive companies. It is evident that these high wage rates were established in reference to conditions which did not afford holiday pay. Yet the panel, in the absence of evidence, bases a favorable recommendation upon its feelings alone and without evidence in support thereof.

BULLETIN BOARD

Again, I must dissent from the Board directive altering the prevailing rule concerning bulletin boards provided for union use. In its agreement with this union and in all of its other union agreements, there is a provision imposing on the company the obligation to make bulletin boards available for union use in the posting of officially signed notices approved by the personnel department of the company's plant.

At the union's request, the majority of the Board has now ordered the company to make the bulletin boards on its premises available for union use for any purpose whatever without participation or approval of the company or other restriction.

The evidence in the case is devoid of any grievance upon which this proposal is based. No claim is made that the company has withheld its approval of proper notice or of any notices. Nevertheless, without any evidence to support it, the Board has directed the company to discontinue its participation in this subject of mutual concern.

This provision of the directive order directly violates the principles expressed in the law and in the decisions of the National Board that matters of this sort are subject neither to the individual action of the employer or the union but are appropriate subjects of mutual discussion and settlement. In the past it has been the view and position of many employers that it was free to reserve its own property for its own exclusive use. In this case, the company has agreed to provide facilities on its own property for use in a manner approved by both parties. The Regional Board now excludes the company from any participation in this function of mutual interest and concern affecting the use of the company's plant facilities.

The Board has disregarded the company's plea that it employs the members of many unions in its plant [which are] affiliated with more than one labor movement and that it must reserve a voice in the publication of written material on its own bulletin boards to the end that the long prevailing harmonious industrial relations in the plant may not be unnecessarily disrupted. Nevertheless, the Board excludes the company from any right to participate in determining the printed material to be published in its own plant and thus disregards the necessity for the company to protect its own legitimate interests in collective bargaining.

The reasonable provision found in all agreements between this company and numerous unions concerning bulletin board space for union use is disregarded by the Board, which directs a special and more favorable clause for this union, again disregarding the proper recognition to be given to the necessity for reasonably equal treatment to all employees and to all labor organizations similarly situated.

Is it not fair to assume that bulletin board provisions and other rules which have been found acceptable to all unions for many years and by all unions but one at this time are in themselves reasonably just? And if so, such rules should not be disturbed.

COMPANY'S INDUSTRIAL AND WAGE POLICIES

My views in respect to all the foregoing matters are confirmed by this company's industrial history. Here is an employer which embraced collective bargaining at an early stage. Its employees were invited to decide freely their wishes in respect to collective bargaining, and their wishes were respected by the invitation of the union agents to enter the company's premises and organize. When organized by more than 12 separate unions, the company voluntarily bargained and has maintained ever since an unbroken record of continuous operations with harmony in all of its collective bargaining relationships.

That record is now rewarded with

a directive order compelling the company to make available to this one labor organization bulletin board facilities on its own property on which the union officials may publish whatever they wish without company participation. This order ignores the fact that all other unions concede the company's interest and concern in what is published on company property.

In its bargaining history, this company has agreed to wage rates far above the rates prevailing in the plants of its competitors and more favorable than those found elsewhere in the area. This is convincing evidence that the night-shift factor was considered and provided for in the rate structure. Whether or not that be true, the company already suffers a competitive disadvantage in the industry and the area because of high wage levels. Those wage levels more than compensate for night-work differentials and holiday pay. Yet, the directive order of the Regional Board will add new wage burdens to the cost of this company's high wage structure and its employees' high earnings. Yet the directive order of this Board clearly penalizes this employer for its advanced position in industrial policy and liberal wage rates.

This directive order is damaging in this area to the policy of the National Board to encourage the settlement of all wage and other disputes in direct negotiations. In this case, an employer has successfully settled all wage and other questions in direct negotiations with 13 separate labor organizations. But the fourteenth insists on an agreement dictated by directive order of the Regional War Labor Board, and this Regional Board responds with provisions more favorable to this union than any of the other unions have agreed to. Obviously, such an attitude on the Regional Board's part can only multiply the rapidly growing refusal of parties to bargain through the knowledge by employers and unions that whatever one union agrees to, another can secure more in dispute proceedings before the Board. Unions cannot afford to be discredited as this decision of the Board discredits so many of them. Such decisions as this one mean a constantly decreasing number of voluntary settlements; a constantly increasing number of dispute cases; and a constantly growing number of dissents and appeals.

To the extent that the panel report contains findings, they fully support the contentions of the employer. The panel report is devoid of any findings to support the recommendations to which exceptions are taken. Instead, it resorts to such a catch phrase as the following: "* * * it is recommended as part of a reasonable ensemble of wages and working conditions that should obtain at the present time in this particular plant, with due regard to the relative position in which the company will be placed among its competitors * * *."

Thus, the panel chairman substitutes his own personal notion for findings and reason and disregards National Board policy. A directive order based thereon should be reversed and set aside.

Dissenting Opinion of Labor Member

SICK LEAVE AND SEVERANCE PAY

CAMPO, Labor Member:—The writer of this opinion has dissented in the above case on the sick leave issue, the severance pay issue, and the night-shift differential issue. It is futile to again reiterate all the reasons why sick leave should be granted. Several lengthy opinions have been written on the subject but to date the National Board has not directed sick leave provisions. The same might be said with respect to severance pay, excepting that Field Memorandum 66 sets forth the National Board policy with respect to severance pay applications. The action of the National Board (Sept. 28, 1944), indicates that severance payments which are reasonable may be approved even though they may not be consistent with industry or area practices. From that release of the National Board, it is apparent that the action relates only to voluntary applications. Inasmuch as no clear policy has been enunciated for dispute cases, the writer of this opinion believes that such a policy is not conducive to sound wage stabilization.

NIGHT-SHIFT DIFFERENTIAL

With respect to the night-shift differential issue, the writer expresses grave concern. The facts with respect to this issue are unchallenged. A majority of the panel recommended a 10-cent per hour premium for the second shift and a 15-cent per hour premium for the third shift. It is of great importance to know that the

panel justified its recommendation on the basis of area practice. To date, it has been the understanding of the labor member that the criteria for night-shift differentials could be sustained either by an industry practice or by the area practice. Despite this finding of fact by the panel, a majority of the Board, labor dissenting, directed a five-cent premium for the second shift and a 10-cent premium for the third shift.

The writer of this opinion does not recall any substantial reasons given for the action taken. The labor member cannot understand the basis of the majority in granting five cents (5¢) for the swing shift and ten cents (10¢) for the graveyard shift. Surely if wage stabilization principles as interpreted by the majority supported the premium amounts directed without any basis, it could likewise support greater premium amounts based upon area practice. Moreover, the panel recommendations were analyzed by the Wage Stabilization Division and, in the confidential memorandum from the wage analyst to the War Labor Board, the following sentence is included: "10-cent and 15-cent night-shift differentials for all workers whether rotating or fixed shift (recommended by panel and Wage Stabilization Division)."

The Wage Stabilization supported the majority finding of fact with respect to this issue and quoted to the Board a case in point.* Upon investigation of the Shell case, it will be found that the Board ordered 10 per cent for the swing shift and 15 per cent for the graveyard shift under a similar set of circumstances. Furthermore, the Wage Stabilization Division maintained that the request of the union as well as the recommendation of the panel corresponded to the area practice. It is apparent that, upon an examination of the evidence of the case, the conclusions reached by a majority cannot be supported. The unique aspect of the case is evidenced in that a majority of the Board assumes the responsibility of ascertaining facts. Moreover, the labor member finds that the majority took it upon themselves to not only ignore the finding of fact submitted by the panel, but also discarded the recommendations of Wage Stabilization. It is apparent from this majority decision that labor continues to suffer under the wage stabilization policies as improperly and inaccurately interpreted by a majority of the Regional Board.

*Report and Recommendations of the Panel**

BACKGROUND

The Parrafine Companies, Inc., describes its Plant No. 1, located on San Francisco Bay at Emeryville, Calif., as engaged in the manufacture of roofing and allied products, paint, felt base floor covering, linoleum, and through a subsidiary at the same location, 85 per cent precision molded magnesia pipe covering. In addition, during the war period special war products are also manufactured, including Navy ammunition boxes, flame proofing of fabrics, camouflage fabrics, camouflage paints, machining Howitzer barrels, and other machine tool fabrication.

There are approximately 1,200 production employees on the hourly payroll. Approximately 800 of these are men and 400 are women. The number of employees is at about the same level as prior to the beginning of the war. Approximately 65 per cent of the company's output goes directly into the war effort. Total production has increased approximately 20 per cent since the declaration of war.

At present, there are 15 labor organizations representing employees in the plant. The union states in its brief that over 500 employees are under the jurisdiction of the ILWU, Local 1-6, the union involved in this dispute. However, the company brief credits the union in the dispute with 388 members in a classified list of employees. In either case, it is the largest number of employees under a single agreement at the plant. Relations between the organized employees and the company seem to have been relatively free from friction and serious misunderstandings during the history of collective bargaining in the plant. The company states in its brief that "it has been the policy of the company, where a concession in working conditions or wages has been granted to one production unit, to apply this same condition or wage to all production units."

The collective bargaining agreement between the parties was terminated on June 10, 1943, after having been

* Shell Development Co., Case No. 10-D-159 [18 War Lab. Rep. 159].

* Ed. Note. Only that portion of the panel report relating to holiday pay and bulletin board is reproduced.

in effect since July 1, 1941. On June 8, 1942, however, an adjustment was made in the wage rates amounting to an increase of seven and one-half cents per hour, effective June 1, 1942.

On Apr. 22, 1943, the union notified the company by letter of its desire to open the contract for modification and changes. After early meetings, the union submitted its proposals in writing, including the six proposals in this dispute and some other items, but not including its earlier request for a wage increase of seven and one-half cents per hour.

On Nov. 29, 1943, the union requested the assistance of the United States Conciliation Service and a commissioner was assigned to the case. During the negotiations preceding the appointment of a commissioner and during meetings with the commissioner, a number of issues were resolved. However, when it had been demonstrated that the remaining issues could not be settled, they were summarized for the Conciliation Service in a letter dated Jan. 17, 1944. On Jan. 20, 1944, Commissioner Frank E. Wenig filed his final Progress Report, and the dispute was certified to the National War Labor Board under the date of Feb. 16, 1944.

ISSUES

1. Sickness and accident benefits,
2. Severance pay,
3. Vacations,
4. Night-shift differentials,
5. Holiday pay,
6. Bulletin board, and
7. Effective date.

[ED. NOTE: Issues 1 through 4 discussed in the panel report at this point are omitted.]

5. Holiday Pay

Present Practice

The following shall be considered as holidays: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Admission Day (when celebrated in Oakland by the N.G.S.W.), Thanksgiving Day, and Christmas Day. Shutdown period for Christmas Day shall be from 4:30 p.m. on Dec. 24 to 7:00 a. m. Dec. 26. Shutdown period for New Year's Day shall be from 4:30 p. m. on Dec. 31 to 7:00 a. m. on Jan. 2. No work except plant protection shall be done on holidays.

Employer's Position

Present practice.

Union's Position

Retain present practice and add: Employees shall be paid at the straight-time rates for all holidays not worked.

Recommendation

It is recommended that the following be added to the existing agreement concerning holidays:

Employees shall be paid at straight-time rates for the following holidays, when not worked: New Year's Day, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas.

It is agreed that an employee, if ordered to report for work on a holiday, must report for work or he will not get the holiday pay provided for in the agreement.

Pay at straight-time rates for holidays not worked is the practice in a considerable number of plants throughout the country and in industry in the Bay Area. When holiday pay is not given, the inequality in the position of workers at hourly rates and those working by the week or month in relation to holiday pay has frequently been expressed.

The employer's position was developed at the hearing and extended in the post-hearing reply brief. It includes the statement:

"The most casual consideration of the holiday proposal will demonstrate that it would be nothing more or less than an addition to each employee's annual earnings sought at this time because further wage increases are out of question, and because it is believed that by indirection the wage stabilization policy of the Board can thus be circumvented."

In recommending holiday pay, the position of the panel in regard to the hearing of the National War Labor Board's policy on wage adjustments and in regard to the reasonableness of the proposal is the same as it is in regard to all recommendations of improved working conditions. The sum total of recommended items, along with the existing wage rates, is felt to be reasonable and in line with trends in industry. The panel is dealing here with this particular company and its employees. It is inevitable that any improvement in working conditions among the various industries will come earlier for some companies than for others. In the long run, there will be some equalization in the competitive position with higher labor

costs. The panel, moreover, has no opportunity to measure and weigh relative costs of production, efficiency of management, margins of profit, or other factors upon which an unbiased and skilled cost accountant might throw some light. It is assumed that the War Labor Board wishes a recommendation based upon an analysis of prevailing practices and tendencies, reasonable and just in the opinion of the panel members signing for the items recommended. It is further assumed that the Board does not require an estimation of short or long run increased cost and a restriction of recommendations to those which conform with the bases for wage increases under the wage stabilization policy. The overall picture of cost, however, is in the minds of the panel members as one of the factors determining the reasonableness of the total of items recommended.

The industry member, Mr. Lowell W. Berry, does not concur in the above report and is submitting a minority report on this issue.

6. Bulletin Boards

Present Practice

The company shall erect bulletin boards for the use of the union in posting officially signed notices. Such notices to have the approval of the plant personnel department.

Employer's Position

Same as present practice.

Union's Position

The company shall erect bulletin boards for the use of the union in posting officially signed notices.

Recommendation

It is recommended that the following provision be substituted for the existing bulletin board provision in the agreement:

The company shall erect bulletin boards for the use of the union in posting officially signed notices.

It is believed that the removal of the present requirement of company approval for the posting of officially signed notices on union bulletin boards would remove an unnecessary cause of irritation and suspicion not warranted by the behavior of either the company or the union. It is felt that the union would not abuse its privilege; that it would be of its advantage not to do so; and that improved employer-employee relations would result from unrestricted use of bulletin boards for officially signed notices.

The industry member of the panel, Mr. Lowell W. Berry, does not concur in the above recommendation and is submitting a minority report upon this issue.

[ED. NOTE: Issue 7, discussed in the panel report at this point, is omitted.]

Signed by Chas. N. Reynolds, representing the public; Leo J. Oberhaus, representing labor; and Lowell W. Berry representing employers, subject to dissent, with opinion, on issues 4, 5, 6, and 7.

TRAV-LER KARENOLA RADIO & TELEVISION CORP.—

Decision of National Board

In re TRAV-LER KARENOLA RADIO AND TELEVISION CORPORATION [Chicago, Ill.] *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS OF AMERICA, LOCAL B-1031 (AFL). Case No. 111-7329-D, May 30, 1945 (made public Aug. 7, 1945).

JURISDICTION OF BOARD—Termination of business—Removal into other state

Dispute of union with employer who has ceased business and moved to other state should be settled on merits by Regional Board since final decision in such situation may be rendered to extent that useful purpose will be served thereby.

For other rulings see Index-Digest 82.100 in this or other volumes.

Majority decision of Board remanding decision of Regional Board VI (Chicago). Public members concurring: Lloyd K. Garrison and Edwin E. Witte. Labor members concurring: Van A. Bittner and Robert J. Watt. Employer members dissenting: Clarence O. Skinner and Vincent P. Ahearn.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June

25, 1943, the National War Labor Board, having accepted the petition filed by the union for review of the Sixth Regional War Labor Board's directive order dated Feb. 15, 1945, in the above entitled case, hereby takes the following action:

I. The case is remanded to the Sixth Regional War Labor Board for issuance of a directive order on the merits of the case.*

Directive Order of Regional Board VI (Chicago)

Feb. 15, 1945

I. The Regional War Labor Board for the Sixth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 3, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby orders that the Trav-Ler Karenola Radio and Television Corporation Dispute Case No. 111-7329-D, which was before the Board, be dismissed because of the cessation of operations in the Chicago plant of the company.

II. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 14 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board through the Sixth Regional Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agrees.

Signed by Edgar L. Warren and Philip Marshall, public members; J. B. Beardslee and R. E. Bowers, employer members; and Samuel C. Evett and Stanley T. Joers, labor members, subject to dissent.

* Ed. Note: The Regional Board dismissed the case after the company closed down its Chicago plant during the dispute and moved to Orleans, Ind. The National Board's action is taken on the basis of an opinion given by the Board's general counsel to the effect that the Board has the power to render a final decision in a case where a company has gone out of business to the extent that a useful purpose will be served thereby. The instant decision is similar to the Board's decision in the Kern County Dehydrating Co. case, 24 War Lab. Rep. 190. (Information obtained by WLB staff.)

Report and Recommendations of the Panel

Sept. 11, 1944

PARTIES TO THE DISPUTE

The Trav-Ler Karenola Radio and Television Corporation is an Illinois Corporation organized in 1940. Its place of business is 1036 W. Van Buren Street, Chicago. Prior to the war the company was engaged in the purchase of parts which it assembled into radios. Since June 1942, its work has been over 90 per cent for the Signal Corps; the assembling of intercommunications equipment — cord sets, jacks, plugs, and switches—for aeroplanes and tanks. The company is a member of the Chicago Radio District Manufacturers Association and was one of the many companies which petitioned the Sixth Regional War Labor Board for stabilized rates for the radio-radar industry. The company was represented at the hearing by Mr. Maurice Shanberg and Mr. Frank G. Marshall, of Marshall & Marshall, and by Mr. Joe Friedman, president of the company.

Local No. B-1031, International Brotherhood of Electrical Workers of America (AFL), first entered into a contract with the company May 10, 1942. It was a union shop with preferential hiring and check-off. The agreement automatically continued during the year 1943-44, with the addition of a negotiated vacation plan, approved by the War Labor Board. The union was represented at the hearing by Mr. Frank Darling, business manager, and Mr. E. Woods.

HISTORY OF THE DISPUTE

Negotiations looking to a new contract began late in January 1944, about the time of the announcement of the War Labor Board's stabilized rates for the radio-radar industry. Shortly thereafter, the company began to lose employees. There were about 105 employees on Feb. 1; on July 19 there were 37 employees.

The company says that it requires a minimum of 100 workers in order to operate with reasonable efficiency. The company greatly stresses the fact that the union has supplied it with no employees despite its desperate need. The company also insists that the union has encouraged workers to quit or to stay home for 60 days. The union contends that the marked drop of the number of employees is largely

due to the higher rates of pay in other factories, and, for the same reason, the union has not been able to direct to this company any of its members who sought new employment.

On Mar. 7, 1944, the union gave notice, pursuant to Sec. 15 of their contract, of their desire to have the contract amended for the year 1944-45. The amendment requested that the stabilized rates established by the Regional War Labor Board for the radio-radar industry be made a part of the contract. It requested automatic wage advances to bring employees to the top of the wage brackets in twelve (12) months. A copy of this amendment [follows] this report. At the hearing, three union representatives insisted that the company threatened to cancel the existing contract if the union called in the Conciliation Service.

On Mar. 9, 1944, the company sent to the union, by registered mail, notification of termination of the contract as of May 10, 1944, its expiration date. This was done pursuant to Sec. 15 of that contract. Shortly thereafter, the union called in the Conciliation Service. Mr. Joseph H. Wilder brought the parties together to discuss provisions of a new contract. Several joint and individual conferences were held. In the matter of acceleration within the wage ranges, the union offered the concession of 18 months instead of 12 months. The company offered 24 months instead of 30 months. Otherwise the parties remained as far apart as before.

In further negotiations, the company objected to the union's proposed radio-radar amendment chiefly on three grounds: (1) The company is not now properly to be classified as radio-radar; (2) even if the company were to be classified as radio-radar, the proposed progression within wage ranges of 12 months is too rapid. The company insisted on 30 months; and (3) the company would not agree to automatic, length-of-service increases within the rate ranges. It insisted on proficiency of performance as the basis for advancement. The company offered five-cent across-the-board increase in wages.

On Apr. 3, 1944, the dispute was certified to the War Labor Board. A hearing was held before the New Case Committee on Apr. 28, 1944. A statement made at that hearing by the union representative, as quoted to this panel from the stenographic record, was "rather than continue to work for the company under the attitude the company has assumed, they (the employees) are staying home for 60 days and would go to work some place else."

The New Case Committee referred the dispute back to the parties for further negotiations. The last of these final negotiations was held on May 12, 1944, without any agreement. On May 16, 1944, the company advised the War Labor Board of the issues then outstanding, and requested a hearing before a tripartite panel, which was held on July 14, 1944. The company in its brief continued its strenuous objection to being classified as radio-radar industry, but did offer the established radio-radar rates of pay under a 30-month progression period and "if we can get the workers." The present wage ranges will be found in the chart [which follows this report]. There is no incentive system in this plant. The company was at one time desirous of installing one, but the union objected because it did not trust the company to operate an incentive system fairly.

The company asserts that, since the number of its employees has fallen off so sharply, it has been losing money, running into five figures. Its overhead has increased some 350 per cent.

ISSUES

1. Is the Trav-Ler Karenola Radio and Television Corporation properly to be classified as a part of the radio-radar industry?
2. Wages and retroactivity,
3. Progression within rate ranges to be automatic or to be based on work proficiency, as determined by the company,
4. Length of period of progression, and
5. Union security.

1. Classification of Company

Company's Position

The company agrees that it was in the radio business before the war and that a very small per cent of its business—perhaps 10 per cent—since June 1942 has been in the radio field. But the company insistently contends that it should not be classified as radio-radar for the following reasons:

(1) Its work now is exclusively and since June 1942 has been almost exclusively, a cord-plug-switch assembly to be used in telephonic, not radio-radar, communications by the Signal Corps.

(2) Radio-radar work requires the constant services of an analyzer. The company has no one serving it in such capacity though it does now have one employee qualified to serve in that capacity.

(3) The job descriptions set up in the survey made by Benge Associates for radio-radar manufacturers of the Chicago area show that but one job in this company should be classified as radio-radar.

Union's Position

The company is justly to be classified as radio-radar because:

(1) The company is a member of the Chicago Radio District Manufacturers' Association and has actively supported the association.

(2) The company joined a large number of other radio-radar concerns in petitioning the War Labor Board for increased and stabilized rates for the radio-radar industry.

(3) The company stated at the hearing that it considers workers experienced in radio-radar work experienced people for them to hire.

(4) Other concerns producing the same parts as this company have been classified as radio and radar by the War Labor Board.

Findings and Recommendation

The company appears to use the term "radio-radar" as the industry used the term before the war. Clearly the company is not now "radio-radar" in the sense it was "radio" before the war. However, the industry description accompanying the radio-radar rates established by the Sixth Regional War Labor Board seems clearly to include manufacturers-assemblers of parts or electronic components which are to be used in radio-radar equipment; under this definition of radio-radar, this company seems to be included.

The panel contacted both the Signal Corps and the War Production Board on the matter of classifying this concern. They were, of course, familiar with the work being done at the plant involved in this dispute. Both those agencies stated that this plant was doing radio-radar work. The panel understands that Wage Stabilization often places reliance on the industry classifications as made by the Signal Corps and the War Production Board.

In the company brief it is stated that the company has been engaged since June 1942 in assembling parts "for aeroplanes and tanks." The two agencies above mentioned informed the panel that both aeroplane and tank communications — the latter called "ground sets"—are radio-radar.

Therefore, the panel finds that the plant of this company at 1036 West Van Buren Street, Chicago is engaged in the radio-radar industry as defined by the Sixth Regional War Labor Board, and the panel unanimously recommends that it be so classified.

2. Wages and Retroactivity

Company's Position

(1) The company has been and is desirous of raising wages.

In negotiations it once offered a five-cent across-the-board increase which was refused by the union. There is no incentive system in the plant.

(2) The company brief offered the established radio-radar rates on the condition of a 30-month period of progression and on the condition that "we can get the workers."

(3) All of the company's contracts with the government are fixed-price contracts and, if wages are increased, the company will request price relief from the Office of Price Administration.

Union's Position

(1) The union stands on its original demand for amendment of the contract to provide for the stabilized rates for the radio-radar industry.

(2) The radio-radar rates should be retroactive to May 10, 1944.

Findings and Recommendation

The average straight-time hourly earnings Dec. 28, 1940, were $0.416, 15 per cent of which is $0.0624, permissible increase under the maladjustment doctrine.

General wage increases since Jan. 1, 1941, are as follows:

Date	Amount of Increase	Total Employees	No. Receiving Increase	General Increase
Mar. 15, 1941	$.02	67	48	$.0143
May 12, 1941	.04	96	72	.0300
Aug. 9, 1941	.04	96	62	.0258
Sept. 13, 1941	.02	98	67	.0137
Mar. 14, 1942	.02	101	94	.0186
May 16, 1942	.02-.195	101	83	.0164
				$.1188

Thus, the workers in this plant have already reeceived nearly double the

wage increases grantable under the maladjustment doctrine.

The company is not at all likely to be able to recruit an adequate labor force and thereby bring its overhead charges once again within reasonable limits and bring profits back into the picture without substantial increases in wages.

Since the panel unanimously recommends that this company be classified as radio-radar, it also unanimously recommends that the radio-radar rates as offered by the company be made a part of the new contract between these parties.

Since this company claims to have been losing money for some months, and it seems likely that it has, it would seem, perhaps, that it should be given some special consideration in the matter of retroactivity. It appears, however, that the condition causing financial loss for several months has been brought upon the company in part by its own action. It is to be noted that before the expiration of the old contract the company offered a five-cent across-the-board increase, and, further, that by June 3 or before the company offered the rates demanded by the union and recommended above. Taking all these circumstances together it seems to a majority of the panel that the wage ranges recommended above should be retroactive to and including the date of the new contract, May 10, 1944. On this point the industry member of the panel dissents.

These rates (as offered by the company) mean that a large per cent of the company's workers will be increased 10 cents to 16 cents per hour. This, together with the recommended retroactivity, will constitute no small payroll burden. That burden, however, will be no greater, it is believed, than the payroll burden already self-imposed by a considerable number of other companies in the radio-radar industry within the past eight months.

3. Progression Within Rate Ranges

Company's Position

(1) The company is opposed to automatic length-of-service increases because the workers do not produce as much if they are assured increases automatically.

(2) Inefficient workers are rewarded the same as efficient workers.

Union's Position

(1) This company cannot be trusted to advance workers according to merit.

(2) Automatic increases are typical in this industry in the Chicago area.

(3) The company will not be able to increase the number of employees in competition with like concerns unless the workers are assured automatic increases.

Findings and Recommendation

The panel believes that the company will be handicapped in recruiting workers which it so greatly needs if it attempts to do so without automatic wage increases.

The panel finds that the large majority of concerns in this industry—probably over 90 per cent—operate under an automatic length-of-service increase within established rate ranges

Therefore, the panel unanimously recommends that the new contract between the parties provide for automatic length-of-service increases.

4. Length of Period of Progression

Company's Position

(1) The company now has a 30-month period of progression, but in negotiations it came down to 24 months. Yet, in agreeing to the radio-radar rates it did so on the assumption of a 30-month progression schedule.

(2) It is important to the company that the progression period be 30 months because about 50 per cent of the few workers it has remaining (37 on July 14, 1944) have been with it for 18 months or over and would immediately go to the top of the wage bracket under the union proposal, thus bringing a too heavy burden on the company. Even at 30 months, 10 of the 37 would go from 70 cents to 80 cents.

Union's Position

(1) The original demand of the union was for a 12-month progression period.

(2) In negotiations, it offered an 18-month period even though many companies have a 15-month period.

Findings and Recommendation

Progression schedules in the industry range all the way from 14½ months to 30 months. A period of 20 to 26 months seems to be most common.

The payroll burden as a result of some 40 per cent of their workers going at once to the top of the range

because of their long service will not, it is believed, be any greater burden than that already experienced by many other radio-radar companies that have voluntarily adopted radio-radar rates.

Therefore, a majority of the panel recommends that the new contract between the parties provide for a 24-month period of progression. That period is close to the period most typical of the industry, and it represents about a 50-50 compromise between the parties. It further recommends that the progression follow the plan indicated in the chart [which follows this case]. Industry panel member dissents.

5. Union Security

Previous contracts (1942-43 and 1943-44) provided for union shop with preferential hiring and check-off.

Company's Position

The above union-security provision should not be included in the new contract and open-shop conditions should prevail because:

(1) The union has not supplied the company with workers as needed and requested.

(2) The union has encouraged workers to remain away from work and to seek certificates of availability at a time when the company was seriously understaffed and while the dispute was in the panel stage.

(3) The union threatened that, if a contract was not signed by June 6, 1944, the company would not have any workers.

(4) The union-membership requirement makes it additionally difficult to secure new employees.

Union's Position

The union-security provisions that have been in the contract for two years should be continued, because:

(1) The union has breached no clause of their contract and has insisted that there be no strike.

(2) The union is under no duty or contractual obligation to furnish employees when notified of the company's need for them.

(3) The union has sought certificates of availability only for such employees as is believed had been promised them.

(4) Union members leaving other concerns could not be directed to Trav-Ler Karenola because of their low wages and slow progression.

(5) The union denies Point No. 3 of company's contentions above, and on other occasions when it has said that "the company would have no workers," it was a conclusion drawn from the workers' attitude toward low wages, etc., at Trav-Ler Karenola.

Findings and Recommendation

Relations between the company and the union do not appear to have been, or to be, good. It is not clear, however, which party has contributed most to this situation. Nor is it clear whether the union, as such, has promoted requests for certificates of availability and 60-day stay-at-home action or whether those actions have been largerly the decision of individual members.

The difficulty over certificates of availability arose over a situation involving a forced closing down of the plant because of lack of materials. It occurred on a Friday. Its length could not be determined. The company states that it offered certificates of availability to any who wished them on that day. Some workers said that the offer of certificates was not limited to that one day. When these workers requested them on Wednesday of the following week when they came for their pay checks, they were refused because materials had arrived and the company needed every worker it had had, and many more. The union sought certificates of availability for those who requested them on Wednesday, believing they were entitled to them. When the company refused them, a union representative unsuccessfully demanded them of the United States Employment Service.

The panel has no way of determining exactly what the oral promise of the company was on the day of the close-down. If it was for that day only, the workers had, according to assertions of the company, about two hours in which to decide whether or not to ask for certificates of availability before quitting time.

The company seems clearly to be in error in its allegation of union violation "of the spirit of the contract" in not furnishing employees when the company informs it of need of workers. The situation is simply the typical union shop with preferential hiring, wherein the company is under a duty to inform the union of its need for workers so that the union may furnish them if it has available members out of work.

The union has not breached any clause of its contract. There has been no strike. Whatever lack of cooperation, whatever breaches "of the spirit of the contract" have occurred on the part of the union as alleged by the company—and surely they are not as serious as the company contends—they fall short of justifying the abolition of the union-shop and check-off which have been in the contracts for two years.

Therefore, a majority of the panel recommends that the union shop and check-off as they appeared in previous contracts should appear in the new contract. Industry member dissents.

This company has used at times a considerable number of high school and other part-time employees. An especially large number of these workers object to joining the union. Some time ago the union agreed that such workers would not have to join the union. Therefore, the panel unanimously recommends that the new contract should contain the following provision:

"No temporary employees working during school vacations nor any part-time workers who work no more than 35 hours per week be required to have any obligations to or connection with the union."

SUMMARY RECOMMENDATIONS

1. The panel unanimously recommends that the Trav-Ler Karenola Radio and Television Corporation, 1036 West Van Buren Street, Chicago, be classified as in the radio-radar industry, as defined by the Sixth Regional War Labor Board.

2. The panel unanimously recommends that wages be those requested by the union, offered by the company, and established as stabilized rates for the radio-radar industry by the Sixth Regional War Labor Board (see chart), and a majority of the panel further recommends, industry member dissenting, that those rates be retroactive to and including May 10, 1944, the date of expiration of the old contract and the recommended date of the new contract.

3. The panel unanimously recommends that progression within the established rate ranges be automatic and according to the chart following the case.

4. A majority of the panel, industry member dissenting, recommends that the period of progression be a period of 24 months, as indicated on the included chart.

5. A majority of the panel, industry member dissenting, recommends that the union-security provisions of the 1942-44 contracts be continued, namely, union shop with preferential hiring and check-off.

Signed by Vell B. Chamberlin, representing the public; Lawrence Gruber, representing labor; and A. F. Dirksen, representing employers, subject to dissent on retroactivity, period of progression, and union security.

Trav-Ler Karenola Radio & Television Corp. Wage Data and Job Classification

Classification	Duties Performed by Employees
Supervisor	An employee who has the supervision of a certain number of employees on the line. She also works on the line as a relief operator and in some instances may work on the line constantly.
Line Worker	
Wirer	Picks up coated or colored wires, mechanically crimps the proper terminals or connections with hand pliers.
Solderer	Applies solder with a hand soldering iron to wire connection. Cleans connection with alcohol or other cleaning agent.
Wirer and Solderer	Performs the duties of a solderer or a wirer, depending upon type of work individual is doing at the particular time, or picks up coated or colored wires, mechanically crimps to proper terminals or connections with hand pliers or applies solder with hand soldering iron to wire connection, and then cleans connection with alcohol or other cleaning agent.
Assembler	Puts together the component parts of equipment being manufactured such as intercommunication cord sets, jacks, plugs, and switches to form subassembled unit or complete unit, according to

Classification	Duties Performed by Employees
	predetermined sequence, using hand screw drivers, hand pliers, hammer, and electric screw drivers.
Stockroom Helper	Aids in receiving material, checks material, parcels out material for various departments, and sees that material is delivered to the various departments to avoid stoppage of work.
Shipping Clerk	Sees that completed material is properly packaged and identified, ready for shipment.
Tool Room	Sets up punch presses and drill presses, makes jigs and fixtures, dies, etc. for production line and stamping.
Punch Press Operator	Operates punch press, punching small stampings either hand fed or automatically fed. These are light weight punch presses.
Drill Press Operator	Drills holes into aluminum and light castings. Operates single spindle drill press.
Riveter	Rivets name plates to castings and stakes screws mechanically. These are light weight riveting machines, electrically operated with foot control.

Note: Punch press and drill press operators and riveters start machines and feed stock (manually or automatically), stop machine at finish of day. Change of stock reel and die setup is not made by these employees, but this work is performed by a setup man.

Amendment Proposed by the Union

Mar. 7, 1944

"Sec. 19. It is mutually understood and agreed that job classifications, rate ranges, the means of progressing from the minimum rate to the maximum rate in the various job classifications, and other matters pertaining to the wage schedule of the company, in regard to employees of the company covered by this agreement subject to the approval of the Regional War Labor Board, shall be marked Appendix 'A' and shall be attached hereto and become a part of this agreement."

APPENDIX 'A'

Trav-Ler Karenola Employee and Job Classifications and Schedule of Wage Rates

Classification	Start	Minimum Rate After: 2 Mo.	6 Mo.	9 Mo.	12 Mo.	15 Mo.	18 Mo.
Analyzer	$.95	$1.00	$1.05	$1.10	$1.15	$1.20	$1.25
Phasing Final Test Tool Room	.95	1.00	1.05	1.10	1.15	1.20	
Inspector	.75	.80	.85	.90	.95		
Punch Press Drill Press Riveter Stock Room Clerk	.71	.76	.80	.85	.90		
Repairman Packer Mounter	.66	.70	.74	.78	.82		
Line Wirer Solderer Assembler Stock Room Helper	.64	.68	.72	.76	.80		

In order to be eligible for the length-of-service increases above provided for, an employee must have worked during at least 400 hours in each rate period of three months; provided, however, that if an employee has not completed said 400 hours of work during any three-month rate period, he or she shall advance to the next highest rate upon completion of said 400 hours of work.

"Sec. 20. All employees who have been in the employ of the employer for a period of one year, but less than five years, prior to the beginning of the vacation period on June 1, 1944, and from year to year thereafter, shall be entitled to one week's vacation with pay. All employees who have been in the employ of the employer five years or more, prior to the beginning of said vacation period and from year to year thereafter, shall be entitled to two weeks' vacation with pay."

Note: Sec. 20 above is not involved in this dispute. Vacations were agreed to and approved in May 1943.

PROGRESSION CHART

Classification	No. Male Workers	No. Female Workers	Present Rates*	Radio Radar Rates†	Rate Start	1 Mo.	4 Mos.	9 Mos.	14 Mos.	19 Mos.	24 Mos.
Supervision-Line Worker	0	3	$.70-$.80	$.76-$.90‡	$.76	$.79	$.82	$.84	$.86	$.88	$.90
Wirer-Solderer	0	4	.60- .70	.64- .80	.64	.68	.72	.74	.76	.78	.80
Solderer	0	4	.60- .70	.64- .80	.64	.68	.72	.74	.76	.78	.80
Wirer	0	4	.60- .70	.64- .80	.64	.68	.72	.74	.76	.78	.80
Assembler	2	19	.58- .68	.64- .80	.64	.68	.72	.74	.76	.78	.80
Punch-Drill Press Riveter	2	2	.58- .68	.71- .90§	.71	.75	.79	.82	.85	.88	.90
Shipping Clerk	1	0	.75- .90	.71- 90	.71	.75	.79	.82	.85	.88	.90
Stock Room Helper	1	0	.60- .70	.64- .80	.64	.68	.72	.74	.76	.78	.80
Tool Shop Set-up Man	5	0	.85-1.35	.95-1.20**	.95	1.00	1.04	1.08	1.12	1.16	1.20

* Present progression is 2 cents every six months for 30 months.

† Demands by the union and offered by the company.

‡ There is no radio-radar stabilized rate for this job classification. This rate range is one recommended by the panel in the belief that it preserves pre-existing wage inter-relationships and grants an increase corresponding to those in other job classifications.

§ Had the company not offered this rate in its brief, the panel might well have considered recommending a lower rate for punch-drill press job. It appears from the present rates in the plant that the radio-radar rate might create intra-plant inequities: at least the union made no point of any intra-plant inequities now existing. And, comparing the company's job description with the radio-radar job description, it appears that the drill-punch press job may be somewhat simpler than that outlined in the radio-radar descriptions.

** There is no radio-radar rate for set-up men. This rate was requested by the union and offered by the company in its brief.

Dissenting Opinion of the Employer Representative

UNION SECURITY

With respect to the report and recommendation of the majority of the panel, I must respectfully disagree with some of the conclusions and recommendations contained in that report.

It is my opinion that the most important matter to be determined deals with the question of union security. A consideration of this matter naturally includes other related matters such as retroactive pay and all matters which have to do with a continued contractual relationship between the company and the union.

It is my opinion that the union has demonstrated by its acts and words that it has not acted in good faith and is therefore not entitled to a contract with the company. An examination of the evidence presented before the panel indicates that, while the contract between the company and the union was in existence and as soon as the union was unable to obtain the company's consent to the demands made by the union in the early part of 1944, the union sought to compel the company to accede to its demands by performing certain acts which were harmful to the company and injurious to the war effort in which the company was engaged.

Encouragement of Absenteeism

Let us look at the record:

Mr. Darling stated (p. 18) that on Jan. 26, 1944, the union asked the company to amend the contract which was to expire on May 10, 1944, so as to include said new demands. Some of these demands the company was willing to grant but, as to others the company remained adamant.

Beginning with this refusal by the company, the union, directly and indirectly, sought to compel the company to capitulate. While up to that time the company had sufficient employees to operate properly, in February of 1944 the number of employees fell off to a point where the company began to lose money, and its production schedule was disrupted. Mr. Daring (p. 19) says that the union was unable to furnish employees; that they had very few employees out of employment. He denied that the company's employees fell from in excess of 100 to about 37 during the time that negotiations were pending between the company and the union, during which time the old contract was still in existence.

At the hearing before the New Case Committee of the War Labor Board, which was held on Apr. 28, 1944, Mr. Darling admitted that members of his union stayed away from employment for 60 days because the company had refused to accede to the demands of the union for a new contract which would incorporate the union demands (p. 6).

Not only was the union thus conducting a campaign of absenteeism, but Mr. Darling's statement that they had no employees available (ante) is belied by the testimony of the company president, Mr. Friedman, who testified (pp. 33 and 34) that 110 men had been laid off by the Sonora people in 1944 and that not a single one of these employees had been sent to the company. Mr. Darling himself admitted (p. 5) that these 110 men were sent by his union to companies other than Trav-Ler Company. Furthermore, Mr. Friedman asserted, and Mr. Darling agreed, that the union had not referred a single employee to the company during the period commencing Jan. 26, 1944, up to the present time.

Bearing in mind that, under the contract between the union and the company, the company was required to maintain a closed shop, and from all of the incidents in connection therewith, including check-off, etc., it is easy to see that the control of the employees was exclusively in the hands of the union. Bearing in mind also the fact that the company was engaged in 100 per cent government essential warwork and that the contract between the company and the union was still in existence, it was incumbent upon the union to live up to its agreement until the contract expired. There is no claim that the company failed to live up to the terms of the agreement, but the acts of the union clearly violated the language and the spirit not only of the contract but of the policy of the War Labor Board which seeks to maintain a status quo during the life of any contract even though negotiations are pending with reference to a modification or a new agreement which would become effective at the end of the contractual period.

Certificate of Availability

With reference to the conduct of the union during the temporary layoff

in June of 1944, it is interesting to note certain significant testimony.

The company witness testified that on Fri., June 2, 1944, and because of a shortage of materials, the company, in fairness to its employees, agreed to give those employees who desired it on that day a certificate of availability. Seven employees took advantage of this offer, and all of them took advantage of the offer on the same day, to wit: June 2, 1944. Not a single employee asked for a certificate of availability after that date until their return to work on Wed., June 7, 1944, at which time materials had been shipped to the company, and the company was prepared to resume full-time employment.

In the meantime, the union, through its representatives, Mr. Darling and Mr. Kuhn, had contacted the employees, as a result of which certain employees who had come back to the plant on Wed., June 7 for the purpose of continuing to remain employees, asked for certificates of availability on that day.

When Mr. Marshall testified (p. 136) that Mr. Darling had on the morning of June 7, 1944, stated that he, Darling, would appear at the plant on that day and see to it that no employees returned to the company unless the union demands were met, Mr. Darling stated, "I don't think I was even in town that day. I can prove I was out of town that day." Yet Marie Panzica, a witness for the union, testified (p. 103) that Darling had been there on the morning of June 7, 1944, and that she and her sister had returned to the plant for the purpose of continuing to remain employees but had requested certificates of availability after they reached the plant. Georgia Cable, the other employee who testified for the union, stated that she, too, returned to the plant and that "so far as the girls personally are concerned, they all wanted to stay." (p. 116.)

With reference to Mr. Darling's reliability, it should also be noted that he admitted that he was not present at the plant on the afternoon of Fri., June 2, and therefore did not know what statements were made by the company representatives to the employees concerning the issuance of certificates of availability (p. 142) yet Mr. Darling stated (p. 146) that the company notified these employees "a few minutes before quitting time" and "they were supposed to give an answer in 10 or 15 minutes," which statements are unsupported by any witness in behalf of the union, even though, had such statements been made, testimony to that effect could have been presented. A contradiction of Darling's statements is the testimony of the company (p. 145) that each employee was personally told between 2:30 and 4:30 of his or her right to receive a certificate of availability if the same were desired, and the additional fact that between that day, Fri., June 2, and Wed., June 5, not a single employee had requested such a certificate.

Among the exhibits offered by the company are certain requests for certificates of availability, all couched in exactly the same phraseology and all prepared and submitted on Wed., June 7, 1944, after Mr. Darling and Mr. Kuhn had conferred with these employees. That Mr. Darling had conferred with these employees with reference to their request for certificates of availability and their refusal to remain in the employ of the company was admitted by Darling to Marshall and was testified to by Marshall at the hearing.

If we had nothing before us except the bare facts of what occurred and without admission on the part of Darling or the witnesses for the union, it would be logical and reasonable to assume that Mr. Darling had persuaded these employees to seek these certificates in order to injure the company.

The sequel to the acts of June 7, 1944, is to be found in the admission by Darling and his witnesses (p. 104) that within two or three days thereafter Darling accompanied these employees to the USES for the purpose of attempting to obtain these certificates.

The USES refused to grant these certificates, and Darling then and there made the following charges, to wit:

(a) The Hebs were going to be taken care of;

(b) That, even if a certificate of availability is not issued by the USES, the employees would be prevented from going back to work for the company;

(c) That, if the certificates of availability do not issue, the union would see to it that no employee certified or recommended by the USES to any company holding a contract with this union would be permitted to work in their closed-shop company; and

(d) That the union may call out all of the people on strike.

This is supported by the records and the testimony of the employees of the USES as well as the information in the possession of the panel.

While it might be argued that the acts of June 2 to June 10, 1944, occurred after the contract had terminated on May 10, 1944, they still throw some light on a continued program on the part of the union to embarrass and injure the company, which program was inaugurated immediately after Jan. 26, 1944. If the union insists that the contract is still in effect at this date, then of course the acts of Darling and these employees are clearly inconsistent with the good faith which should attend the compliance with the terms of said contract.

The company had a right to refuse to accede to the demands made by the union which were to become effective May 10, 1944. The company had a right to expect, and it was incumbent upon the union to comply with the language and spirit of the contract until its termination. It should be noted that the company joined with the union in requesting the modification of the vacation schedule in May of 1943 and that, until the negotiations commenced on Jan. 26, 1944, the relations between the company and the union were tranquil and pleasant. All the acts which interfered with production and the regular employment relationship between the company and the union were performed by the union through its representatives.

I should like to mention at this time that the majority of the panel, in its statement entitled "History of the Dispute," neglected to point out that the absenteeism and the drop of employment as well as the refusal on the part of the union to direct employees to the company, even though the same were available, were all made during the time the contract was in existence and immediately after the first demands by the union on Jan. 26, 1944. The threats of Darling to call out all of the employees of the company are supported by the evidence and by the program of attrition which the union pursued.

Conclusion

It is my position that the company should not be required to enter into a closed-shop agreement with the union involved in this proceeding. For the reasons already set forth, the union has demonstrated that it cannot be trusted to live up to the language or the spirit of a contract even while the same is in existence. I respectfully disagree with the members of the panel who take the opposite view. The latter state "the union has not breached any clause of its contract. There has been no strike." The acts already set forth above clearly indicate a breach of the contract. The actual encouragement of absenteeism, the threat to pull all of the employees out of the company, and the acts of Darling and his associates since Jan. 26, 1944, have been as effective insofar as pressure against the company is concerned, as if a formal strike had been called. It is impossible for me to reconcile the acts of the union with the spirit of cooperation and patriotic duty which is required by the policy of the War Labor Board as well as by the judgment of many fair-minded citizens.

To recapitulate, the union has breached the words and spirit of its contract and forfeited the right to become a contracting party for the following reasons:

(1) Sanctioning and encouraging employees to remain away from employment for 60 days during the period of negotiations and while the contract was effective and binding.

(2) Failure to furnish the company with a single employee from the time negotiations commenced and while the contract was in existence.

(3) Diverting available employees to other companies during the period of negotiation and while the company contract was in existence.

(4) Encouraging and persuading employees to request certificates of availability even though these employees intended to return to employment after a three-day lay-off.

(5) Threatening the company to pull all of its employees out in the event the company refused to accede to the demands of the union.

Signed by A. F. Dirksen, representing employers.

BOWER ROLLER BEARING CO.—

Decision of National Board

In re BOWER ROLLER BEARING COMPANY [Detroit, Mich.] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 681 (CIO). Case No. 111-9618-D, July 11, 1945 (made public Aug. 8, 1945).

MAINTENANCE OF MEMBERSHIP—Denial for wartime strike—Reconsideration at expiration of penalty period

Regional Board properly denied, for six-month period, maintenance-of-membership clause of prior contract because union members engaged in four strikes. Such denial, however, should not bar consideration of issue in new case presently pending before Board, and maintenance of membership should be restored to union effective from termination of six-month penalty period if union's record since issuance of Regional order is found to be satisfactory.

For other rulings see Index-Digest 110.279, 110.897, and 165.540 in this or other volumes.

Majority decison of Board affirming directive order of Region XI (Detroit). Public members concurring: Lloyd K. Garrison, Lewis M. Gill, and Edwin E. Witte. Labor members dissenting on Par. I: James A. Brownlow, John Brophy, and Carl J. Shipley. Employer members dissenting on Par. II: Earl Cannon, Walter P. Knause, and Clarence O. Skinner.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petition for the review of the directive order of the Regional War Labor Board for the Eleventh Region dated Mar. 30, 1945, and having reviewed the entire record of the case, hereby decides the dispute between the parties and orders:

I. The petition for review filed by the union is denied, and the order of the Regional War Labor Board of Mar. 30, 1945, is affirmed and adopted as the order of the National War Labor Board.

II. The affirmance of the directive order of Mar. 30, 1945, shall not bar consideration of the issue of union maintenance of membership in the case which is now pending involving the 1945 contract between the parties. In passing upon the issue, particular attention shall be given to the record with regard to responsibility made by the union since the issuance of the directive order of Mar. 30, 1945. If this record is found to be satisfactory, union maintenance of membership shall be restored effective from the termination of the six month's period specified in the directive order and the usual 15-day escape period.

III. The terms and conditions set forth in said directive order of Mar. 30, 1945, shall govern the relations between the parties until modified by mutual agreement or further order of this Board.

Directive Order of Regional Board XI (Detroit)

Mar. 30, 1945

1. The Regional War Labor Board for the Eleventh Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

Maintenance of Membership

The maintenance of membership is hereby denied. However, the union may petition this Board for a reopening of the maintenance of membership six months from the effective date of the directive order.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 15 days from the date hereof unless in the

meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately effective.

Signed by Louis C. Miriani and Herman J. Wyngarden, public members; Stephen F. Dunn and Clifford G. Hale, employer members; and Daniel N. Gallagher and Earl L. Smith, labor members, dissenting with opinion.

Opinion of the Board

MAINTENANCE OF MEMBERSHIP

MIRIANI, Chairman:—This Board had to hold two panel hearings on the issue of maintenance of membership of the strikes that occured prior to final decision by the Board.

The union contends that the company "will use any means to win its point," [that is,] to deprive it of maintenance of membership.

The company contends that the strikes by members of this union show a lack of responsibility. Consequently, it points out that the union is not entitled to union security.

Approximately 1,600 employees are involved. The work stoppages are as follows:

1. Jan. 31, 1944—manhours lost, 1,546;
2. Feb. 15 to 17, 1944—manhours lost, 22,160;
3. Oct. 5, 6, and 7, 1944—manhours lost, 23,500; and
4. Feb. 8 and 9, 1945—manhours lost, 20,539.

The first and second strikes were caused by several hundred female employees over the dissatisfaction of a Regional War Labor Board order denying them a wage increase. Several months later the National Board, upon petition for reconsideration, modified this Board's order and granted the wage increase.

The third strike occurred because of disciplinary action against an employee. The fourth strike was a protest by certain employees against an order by a supervisor on the operation of certain machines.

Strikes three and four could easily have been adjusted by the parties if they had been tolerant toward each other and proceeded as provided for in the contract. The panel held two hearings and went into the facts as to strikes one and two. Although the panel majority condemned the union for its arbitrary action and irresponsibility, it did, in view of the union's prior record of responsibility, industry, dissenting, recommend the continuance of maintenance of membership. Before this Board could act on this panel recommendation, strike four occurred.

The National Board does not grant maintenance of membership to a union which disregards its no-strike pledge and demonstrates a lack of responsibility in keeping its members at work pending decision of a dispute.

The union blames the company for the strikes. The local officers put the responsibility for maintaining production upon management even though the union members refused to work. Maintenance of membership is usually granted where it will result in industrial harmony and increased cooperation between the union and management. Assuming the company is partially to blame, the union leadership must assume some responsibility for being unable to get its members to stay at work in the interest of war production.

This Board has adopted the policy of granting maintenance of membership only after a thorough examination of the merits of the case and after ascertaining that the union and its officers are capable of fulfilling all of the obligations to its members, management, and the War Labor Board. There are members in this local union who do not measure up to the prescribed standards as enumerated herein.

The public members cannot adopt the panel recommendation at this time. However, instead of denying maintenance of membership for the duration of the contract, we have provided for a probationary period of six months from the effective date of the order.

This ruling is in accordance with the established policy of the National

Board of withholding maintenance of membership from a union for a probationary period where there is evidence of a lack of responsibility in carrying out its wartime obligations.

Dissenting Opinion of Labor Members

MAINTENANCE OF MEMBERSHIP

GALLAGHER and SMITH, Labor Members:—The labor members of the Board dissent from the denial of maintenance of membership under the circumstances existing in this case. We cannot agree with the reasoning of the majority as stated in the chairman's opinion nor do we think the decision supportable in terms of National Board policy, as shown in its decision in cases involving this issue.

The panel examined carefully and minutely the events leading up to, and the underlying causes of, the first three of the four work stoppages which constitute the basis of denial of union security at this time. In each of its two reports, the panel found that the union leadership had acted in a responsible manner in doing all in its power to prevent the stoppages and to bring about a return to work. On the other hand, the panel found that the company was at least partly responsible for the failure to avert the stoppage of Oct. 5, 1944. On page 7 of its second report, the panel, after reviewing the events leading to Hanna's discharge and the subsequent stoppage, states:

"Such action on the part of management's representative does not imbue a confidence in union leadership or union employees necessary for a high morale in their war effort. The stand-off attitude of Squire displayed in his meetings with union officials subsequent to 10:00 a.m. on Oct. 5, 1944, in meeting their request for immediate action under Step 4 of the grievance procedure, and his resorting to the technicalities of the contract as a bar to direct action in this matter was uncalled for and improper in view of the knowledge of the emergency given to him by the union leaders. Squire's action in refusing to advise the union president of the time already set for the grievance meeting while he was in the presence of the striking employees and the union president, in the roll bearing department, shows a total failure on his part to recognize any responsibility to prevent a work stoppage and, in fact, reflects his thought that such was the sole responsibility of union leadership. This record discloses that he had been advised of the gravity of the situation not only by the union leadership but through the information relayed to him that the tool grinding department, during its lunch period prior to 11:45 a.m., had held a meeting on the Hanna discharge. What he or the company stood to gain by the refusal to take any one of a number of steps to aid the union leadership in preventing the strike is hard to ascertain or recognize, particularly in view of the threat of substantial loss of war production."

In view of the above facts, we note with interest but also puzzlement, considering the decision, the statement in the chairman's opinion that "* * * Strikes three and four could easily have been adjusted by the parties if they had been tolerant toward each other and proceeded as provided for in the contract." In other words, both parties were at fault but the Board punishes the union while winking at the company's actions, which were equally responsible for the stoppages. Or, to state the same proposition in another way, the union is exclusively responsible for the maintenance of continuous production while the company is free to take pot-shots at the union as it pleases without fear of retaliation from the union or effective censure from the War Labor Board. What price maintenance of membership under these "prescribed standards."

We agree that "the National Board does not grant maintenance of membership to a union which disregards its no-strike pledge and demonstrates a lack of responsibility in keeping its members at work pending decision of a dispute." However, when, as in the present case, the union leadership adheres strictly to the no strike pledge, brands wild-cat stoppages as unauthorized, and uses its full authority and influence to accomplish a resumption of production even in the face of a provocative and intransigent attitude on the part of management's representatives, it is the policy of the National Board to award union security in order to strengthen the authority of the responsible leaders. Any other policy would be palpably inconsistent with a primary raison d'etre of the War Labor Board; to encourage uninterrupted production. As pointed out by the panel, the opposite course of action could not possibly result in any benefit to the company nor aid in the

betterment of labor-management relations at this plant. On the contrary, the action of the Board only serves to encourage the irresponsible elements among the local's membership.

This policy was explicitly stated in public member Graham's opinion in the Humble Oil case, in the following terms:

"The nation should, in equity, provide the unions with a fair protection against disintegration both from the impacts and controls of war and from the impacts of the reconversions, confusions, and all the transitions of the peace. Responsible union leadership which patriotically cooperates with the national policy for winning the war and the peace should not be endangered by demagogic and disruptive leadership. The responsible and cooperative union should not be crippled by refusals and failures of irresponsible members to pay union dues because the union does not have the disciplinary power of the union shop and does not use its striking power for increased wages." (15 War Lab. Rep. 388)

And, in the same opinion:

"If the union is responsible and holds to its no-strike pledge, has elections open to the members, and makes audited financial reports to the members, then the basic considerations of industrial equity and national necessity provide the simple and clear basis for providing for the maintenance of a voluntarily established union membership for the duration and maintenance of the contract in time of war."

The question of "what the company stood to gain" by it refusal to meet its responsibilities by taking prompt action in conjunction with the union leaders to avert the strike is no doubt answered by the Board's denial of maintenance of membership.

The wildcat stoppage of Feb. 8, 1945, was more a further demonstration of the responsibility of the local union leadership than otherwise. The walkout was ended in 12 hours largely through the efforts of the local leaders. This same wildcat stoppage was encouraged to some extent by the action of the company officials in issuing gate passes to the workers threatening to stop work.

We believe that the whole record of this case clearly bears out the responsibility of Local 681 officers and committeemen. The chairman's opinion states, " * * * Assuming the company is partially to blame, the union leadership must assume some responsibility for being unable to get its members to stay at work in the interest of war production." From our understanding of the findings of the panel and the facts of the case, it is extremely difficult to comprehend the basis of the accusation implicit in this statement. In each instance, the leadership of the union has taken a firm stand in opposition to certain irresponsible sections of the membership. In so doing, in the presence of provocation and absence of cooperation on the part of management, the leaders placed themselves in an anomolous position in the eyes of large sections of their constituency in order to prevent a prolonged interruption of production. It must be noted that the first two stoppages were instigated by workers new to the industry and unaccustomed either to industrial or trade union dicipline, Under the circumstances, the wonder is that responsible leadership was able to effectuate the prompt terminations of the wildcat walkout that it did.

The other two stoppages were the result of discharge or threat of discharge and the failure of management to adopt positive action in cooperating with the local union to prevent spontaneous combustion of the inflammable material present in any such situation. In both instances, the local leadership did everything in its power to, and did, bring about an early resumption of production.

It is also important that the fact be noted that the union, contrary to the company's assertion, did, in the Hanna incident, agree to disciplinary action in the form of a nine-day layoff.

We call attention also to the fact that this local has further demonstrated its responsibility in several situations potentially explosive: (1) In the general strike of Detroit area maintenance workers, this local was one of the exceptions in preventing a stoppage by its maintenance men; (2) From May to November 1944, the company discharged 126 employees including three chief stewards with no resulting stoppages; (3) On Nov. 2, 1944, a chief steward was disciplined by a three-day layoff, the company violating the contract clause which provides that the bargaining committee be notified within one working day of disciplinary action against an

employee; despite much unrest as a result of this incident, there was no stoppage largely because of the leadership's effort to settle the matter.

We do not believe it necessary to include here a lengthy recitation of National Board pronouncements which support our view of this case, but we do desire to call attention to the decisions in the following cases which are very similar to the one at issue: Federal Shipbuilding and Drydock Co. (21 War Lab. Rep. 121); Big Four Meat Packing Company (21 War Lab. Rep. 652); and Consolidated Vultee Aircraft Corporation (16 War Lab. Rep. 159).

Finally, we do not comprehend the references in the chairman's opinion to a "probationary period of six months." It's a queer kind of probation that puts a man in jail and says, "We'll let you out in six months if we feel like it; otherwise, you're in for good." We note that this peculiar brand of probation was not used in the Federal Shipbuilding and Drydock Co. case; rather, the union was given maintenance of membership with the proviso that the grant would be reviewed after six months in the light of the union's record during that period.

The practical effect of the Board's action is to inject into an already difficult situation a six-month escape period which will only serve to make the task of responsible leadership that much more difficult of accomplishment.

We are of the opinion that this decision represents a very short-sighted and superficial approach to one of the basic problems of wartime labor-management relations. If responsible leadership is to be encouraged—and sound policy requires that it must be—we can ill afford to deprive a local union leadership of one of its chief means of maintaining discipline among those of its members who may be inclined, through ignorance of the principles of their union or their Government's labor policy or unfamiliarity with the procedures of industrial relations, to disregard their responsibility to maintain an uninterrupted flow of war materials to their brothers-in-arms. This Board must be prepared to support responsible union leaders, especially when, as in this case, management displays an ill-natured opposition to a strong leadership backed up by necessary union-security provision. Management's objective in this instance is all too clearly to weaken the union's leadership with the ultimate aim of destroying the union itself. The public members, while assuredly not a party to this modus vivendi, have by their action on this issue provided an effective means to that nefarious end. We have no illusions regarding the use to which the company will put the six-month escape period provided by the Board's denial of union security.

This management's past record of anti-unionism is too clear for its motives to be misinterpreted. This is the same company that was found by the National Labor Relations Board in 1941 to have dominated a previously existing union. Subsequent incidents of company interference in the local's affairs are a part of the record of cases No. 12 [1 War Lab. Rep. 61] and No. 739 [9 War Lab. Rep. 23].

For the above reasons, we submit that denial of union security in this issue was not only a contravention of a basic policy of the National Board but also a grave error in judgment of the practical labor-management and human relations problems existing in this situation.

Report and Recommendations of the Panel

BACKGROUND

The Bower Roller Bearing Company plant is located in Detroit, Mich., employing approximately 1,600 employees exclusive of office help and is engaged almost exclusively in war production.

The union, since its first collective bargaining contract with the company in 1942, has had approximately 85 to 90 per cent of the plant employees in its membership.

It is conceded that, prior to the stoppage of work on Jan. 31, 1944, and Feb. 15, 1944, involved herein, there had been no real disputes other than those incidental to the negotiation of an original contract, which disputes were submitted to the National War Labor Board. Subsequent to the execution and effectiveness of this original contract, it is conceded by all parties that generally their relationship was amicable. Grievance procedure operated to dissolve disputes, and both parties acted in good faith under the contract provisions.

Since Feb. 17, 1944, labor relations between the parties have been

amicable, and there has been no unauthorized strikes or work stoppage.

In the negotiation of their new contract, the company and union have agreed on all provisions except the issue in dispute herein.

ISSUE

Maintenance of membership to be continued in the present contract with or without the 15-day escape clause.

Maintenance of Membership

Company's Position

The company contends that the maintenance of membership with 15-day escape clause effective previously under the contract between the disputes be eliminated in its entirety by reason of union's irresponsibility as evidenced by strikes of Jan. 31, 1944, and Feb. 15, 16, and 17, 1944. These stoppages of work arose through no existing dispute with the company but arose out of decision of Regional War Labor Board and an alleged delay on determination of an appeal to the National Board. Such stoppages were in violation of the no-strike pledge of the union, the War Labor Disputes Act, and the Michigan State Law.

Union's Position

The union contends that the record discloses their responsibility under their previous contract and that the inclusion of the maintenance of membership without the fifteen- (15) day escape clause will be productive of even more responsible action on part of union, in that it will give it more control over employees in the prevention of unauthorized strikes and work stoppages.

Findings of Fact

There is no evidence herein that the work stoppages on Jan. 31, 1944, and Feb. 15, 1944, were authorized by the union representatives or that they were the instigators thereof. On the contrary, it appears that the union officers and representatives on both occasions made every effort to return the workers to work.

The company submitted a notice handed out by the union to its membership prior to Jan. 31, 1944, which made reference to the Regional Board's decision of Dec. 18, 1943, as being not in accord with the facts of the case submitted and stating that such unjust decision would be appealed by the union. We cannot place upon this notice the contention made therefore by the company; namely that it was in agitation of a strike, and it appears to be no different in its form than an opinion customarily given between a counsel and his client on an adverse decision.

The above strikes were the only ones which disturbed the prior and subsequent existing record of amicable labor relations and bona fide performance of the contract between the parties.

Such unauthorized strikes particularly center around the female workers of the company, arising out of the Regional War Labor Board's denial on Dec. 18, 1943, of their requested wage increase. The union appealed this directive order, and the company filed its reply therein on Jan. 13, 1944, which placed the same before the National Board for determination. On Apr. 24, 1944, the National War Labor Board issued its directive allowing the wage increase requested for female employees.

However, on Jan. 31, 1944, the female employees left their jobs and through the efforts of both the company and the union representatives were returned to work on the following day. This unauthorized strike resulted in the loss of 1,546 manhours of work. On Feb. 15, 1944, the female employees again left their jobs and continued out through Feb. 16 and 17, 1944. The male employees left their jobs on Feb. 17, 1944, for a short period of time.

Through the efforts of the union representatives and Mr. Johnson, vice president of the company, made at a meeting of the local, the employees returned to work on Feb. 18, 1944. Both unauthorized strikes by the female employees arose over what they contended was a delay in granting their requested wage increase.

The Regional directive of Dec. 18, 1943, granted to the union a maintenance of membership with a 15-day escape clause, but the same was not put into effect by reason of union's appeal therefrom on denial of wage increase to female employees.

There were no subsequent unauthorized strikes or work stoppage, and to the present date it is conceded that the relations between the disputants are amicable.

The facts disclose that, under the maintenance of membership with the fifteen- (15) day escape clause, there has been no loss of union members.

Conclusion

To uphold the company's contention herein calls for this panel to recommend sanctions of a punitive nature. This panel as a third party to this dispute has the special problem of determining in its decision whether first, such sanction or punitive measure requested by the company will aid and advance the necessary war production in this plant; secondly, will it be conducive to better future labor relations between the parties and prevent further work stoppages, and third, will it confer upon the company constructive benefits other than a personal satisfaction of the vindication of its position. It is our opinion that, before such punitive action be taken, it must appear that real and actual benefits must accrue therefrom as an aid to the advancement of our war effort and result in real and actual benefit to the company other than mere personal satisfaction. Our decision to be predicated on any other factors might readily accomplish nothing more than to create, during this war emergency, a vindictiveness between the parties leading to further disagreements and disputes and resulting work stoppages.

In view of the amicable relationship existing between the parties prior to the unauthorized strikes and existing as well, subsequent thereto, this panel does not feel that the record herein discloses a state of conditions which calls for the asserting of punitive sanctions as requested by the company.

However, such determination cannot be considered by the disputants herein as an approval of the unauthorized strikes which took place in this plant. This panel severely reprimands such action and points out how useless and uncalled for it was in view of the subsequent National War Labor Board ruling, retroactive in its effect, which granted to the employees involved in the strike their fullest demands. This panel in the instant case condemns the employees' actions in violation of the no-strike provisions of their contract and points out that such action as taken in the instant case can only be detrimental to the cause of labor and the future of collective bargaining. The exercise of restraint and judicious action on the part of workers in similar cases can only be productive of the respect and confidence necessary to future amicable collective bargaining and labor relations between management and labor. Continued action of this type on the part of labor must necessarily bring into being sanctions imposed by the Board or, in the future, by the company on its own initiative.

There appear herein no good reasons why this panel should at this time invoke as a punitive measure denial of the maintenance-of-membership clause with the 15-day escape clause; and, likewise, no good reason exists herein which entitles this panel to grant the union's request for such maintenance-of-membership clause without such 15-day escape clause.

Recommendation

It is the recommendation of this panel on the facts of this case that the contract of the parties be executed to contain the following:

1. That the present maintenance-of-membership clause with a 15-day escape clause as previously granted by this Board and effective in the prior contract be continued in effect.

Supplementary Panel Report and Recommendations

BACKGROUND

These disputants were previously before this panel in this same case and on the same issue arising over strikes which occurred on Jan. 31 and Feb. 15, 16, and 17, 1944. It is unnecessary to restate in detail the facts and findings thereon, and it is sufficient to say that such strikes were not in any way provoked by the actions of management, and the union officials in cooperation with management made every effort to return the employees to work. The strikes originated among the female employees over their dissatisfaction with alleged delay of the National War Labor Board in passing on their request for an increase. That such strike was unnecessary and uncalled for is best shown by the fact that, immediately thereafter, the increase was granted by the order of the Board. This panel therein pointed out that the relationship of the parties under collective bargaining had been reasonably amicable with the parties resorting to grievance procedure and statutory remedies rather than strikes and stoppages of work. This panel therein reprimanded the union members for causing such strikes but, because of their past record of responsibility, denied the company's demand that the maintenance-of-membership provision be revoked.

Immediately prior to the filing of this panel's report thereon, the strike of Oct. 5, 1944, extending through Oct. 7, 1944, took place, whereupon the company renewed its demand that a further hearing be had and the maintenance-of-membership provision be revoked by reason of such irresponsibility of the union as shown by its violation of its no-strike pledge.

ISSUE

1. Revocation of the maintenance-of-membership provision of the union contract by reason of the union's alleged violation of its no-strike pledge in causing strike of Oct. 5, 1944.

Maintenance of Membership

Company's Position

Company contends that this panel has no jurisdiction to enter upon a factual hearing of whether either of the disputants were responsible for the work stoppages which arose, but are limited solely to a determination of the existence of such work stoppage and automatically thereon this Board must impose the sanction requested herein by the company.

Union's Position

The union contends that their leadership was responsible, in that every effort was made not only to apprise the company of the unrest and emergency which had been created in the plant by what they termed the peculiar circumstances of Hanna's discharge from that plant; [that they had adhered] to grievance procedure; and that the refusal of the company to recognize such emergency, and take necessary action provided by the terms of the contract, and to extend their aid and cooperation to such union officials to prevent such work stoppage was such irresponsible action on its part that, if it did not charge them with provoking the work stoppage, it at least binds them with a measure of responsibility therefore for which the union should not be solely held guilty nor for which should sanctions be visited upon it.

Findings of Fact

Prior to work stoppages of Jan. 31 and Feb. 15, 1943, the labor relations between parties were reasonably amicable with no serious disputes resulting in work stoppages, and those which arose were dissolved either under grievance procedure or by resorting to procedure under prevailing disputes acts. The above strike arose solely through female workers' dissatisfaction with alleged National War Labor Board delay in acting on wage increase. The increase was granted as requested shortly thereafter. This panel, in previous hearing, condemned such union membership action but, in view of the prior record of responsibility under contract and the cooperation of union officials in dissolving such stoppage, the company's request for revocation of maintenance of membership was denied without prejudice to their right to renew the same as the occasion might arise.

On Oct. 5, 1944, a further work stoppage arose, extending through Oct. 7, 1944. Such stoppage seems to have arisen over the discharge of a union member, Fred Hanna, which, the union contended, was caused by the management as a provocation for a strike. On the other hand, the management contends that not only was such action not provocation for such strike but was a proper discharge, based on reasonable cause. Management contends that the existence of provocation for strike or not, the work stoppage was a violation of no-strike pledge by union requiring issuance of sanction by War Labor Board.

Fred Hanna had been employed with company for over ten years, seven or eight of which were spent in roll bearing department and the last two years in the tool grinding department. From the spring of 1943 to September 1943, he was vice-president of the union and from September 1943 to spring of 1944 was president thereof. During this entire period of employment, he had never been discharged or subject to disciplinary action whatsoever. During the last two years, Hanna was under the supervision of the foreman of the tool grinding department, Mr. Buhl.

The entire facts of this case devolve around the conflicting dispositions of these two individuals and their inability to get along with each other.

Mr. Buhl, on Oct. 2, 1944, reported Fred Hanna to Mr. Squire, assistant factory manager, and stated he was having more or less trouble with this employee because of his horse-play and monkeying around; such as doing too much talking and yelling and hollering. On Oct. 3, 1944, Hanna approached Squire as he went through the department and said Buhl had complained about him and Squire told Hanna he did not care to enter into any discussion with him about what union officials had discussed with

Hanna, and it was up to him to straighten out and get along. It appears that Buhl had complained to the union president and vice-president shortly before that Hanna's whistling on job annoyed him. These union officials contacted Hanna and he agreed to discontinue same.

Oct. 4, 1944, Buhl renewed his complaint to Squire, and the latter, at 9:00 a.m., requested the personnel manager to institute an investigation of the entire matter. The personnel manager then called two employees of the tool grinding department to give statements along with one taken from Foreman Buhl. The employees' statements substantiated the statements of union officials that Buhl was annoyed mostly by Hanna's whistling and singing. Buhl's statement enlarged on his previous complaint against Hanna, alleging Hanna was unattentive to his work and threatened Buhl. These latter statements are unsupported other than by Buhl's statement.

At 4:00 p.m. of the same day, Buhl again complained to Squire. The personnel manager, in his written statement read into record, states that at same identical time he made a report of his investigation to Squire, and the latter then ordered Hanna's card pulled and stated Hanna was not to be allowed to enter the plant until Squire had a chance to talk to him. Squire stated that, when Buhl complained this time, he ordered Hanna barred from the plant. The evidence is clear that Squire's action was taken on Buhl's further complaint and not on Olsen's investigation. At no time did Olsen or Squire call in Hanna for a statement of his position nor did they contact the union. Squire stated he took such action immediately upon Buhl's complaint and did so because he wanted to review this case with Mr. Johnson, vice-president, before taking any definite action and until the case could be fully gone into. Prior to Hanna's discharge, Squire did not contact Johnson nor did he go into the case in further detail.

Hanna reported at 6:50 a.m. on Oct. 5, 1944, and was barred at the gate and then taken to personnel manager. He was told that he could not enter until it was determined what was to be done in his case. Mr. Squire was advised of Hanna's arrival but made no effort to see him, but advised that Hanna be told to return at 9:00 a.m. when Mr. Johnson, company vice-president was expected.

The Union president and vice-president, on their entrance to plant, contacted Hanna and were informed of the refusal of company to admit him to work. These officials were present in personnel office. Hanna, in their presence, asked if they intended to discharge him for misconduct or his quality of work. Personnel manager said he did not know. Hanna returned at 9:15 a.m. Squire was so informed and immediately met with Olsen and foreman, Buhl, and they decided to discharge Hanna. Personnel manager returned to his office and advised Hanna and union officials of the action and stated that if they wanted to go further they could follow the grievance procedure.

Mr. Johnson was in the plant at this time, but evidence does not show he was appraised of case or entered into the same.

The next step in grievance procedure was taken by the union officials by contacting the plant manager, Squire. They requested a reason for Hanna's discharge and testified they were told it was because Hanna refused to cooperate with his foreman; and, when requested to elaborate thereon, Squire stated it was because of his whistling and singing.

Although Squire denies this, it is fair to presume that, with statements of two employees before him so stating, he did at least mention these actions. At about 10:00 a.m., the union officials left and prepared a letter requesting an immediate hearing on the discharge under the fourth step of the grievance procedure. After union officials left, Olsen gave Hanna a discharge slip stating the reason to be his failure to cooperate with foreman. At 11:00 a.m. they returned to Squire and handed him the letter. He tossed it on the desk unread. The union officials requested he read it and grant an immediate grievance hearing, as this was an emergency and employees in plant were upset over the same. Although Squire denied that union officials stated that an emergency existed, the truth of such statement is supported by personnel manager's written statement wherein he states he heard the union officials in his presence state that it was an emergency. Squire then told the union officials that the contract gave the company 24 hours to decide on meeting.

The contract thereon reads as follows:

"If the Union is dissatisfied with answer of factory manager, the griev-

ance shall be referred to the bargaining committee and representative of Management and a meeting held as soon as practical. Whenever practical, 24 hours' notice in writing shall be given of such meeting and contain a list of grievances to be considered at the meeting."

The record discloses that Squire, on number of occasions, had met immediately with union officials on submission of grievance and had full authority to do so. It appears on this occasion that he stated he would have to contact Mr. Johnson, vice-president.

After the union officials left, Squire contacted Mr. Johnson at the latter's office. Mr. Johnson was advised of the situation and agreed to meet at 1:30 p.m., saying it was too close to lunch time to meet before that. Mr. Squire stated this meeting took place about 11:25 to 11:30 a.m., and he then left to return to his office a short distance away. He passed the tool grinding department where Hanna worked and saw that they had returned to work after their meeting on the lunch hour over the Hanna discharge. This statement and his own testimony discloses that he was advised at least prior to 11:30 a.m. that some of the employees were meeting on the Hanna matter. This information in his hands would support the emergency conveyed to him by the union officials.

On return to his office, he was phoning the personnel manager of the meeting at 1:30 p.m., when Mr. Drew Foreman of the roll bearing department came in and told him some of the men were leaving the plant. Hanna had been employed in this department for seven years prior to his employment in the tool grinding department under foreman Buhl.

Squire testified that time cards disclosed that stewards in roll bearing and press department ran out at 11:49 a.m., and they were the first to leave the plant. Union president testified that, when employees of this department started leaving, he directed stewards to go out and prevent a picket line being formed and to direct such to return.

Squire left his office and went down aisle of press shop and asked foreman to get the men back to work. The men were mulling around, and the president of union was there with them on a box urging the men back to work. At that time, he made no effort to convey word to the president of the local that the grievance meeting was at 1:30 p.m. but continued on down aisle to the roll bearing department. The men were leaving this department. All departments then left except two.

The union officials later that day, and on the following days of strike, requested that Hanna be reemployed pending grievance hearing, and company refused to negotiate as long as employees were out.

On Oct. 9, 1944, the employees returned and grievance hearing was commenced. In the meantime, Mr. Buhl had enlarged his previous complaint and such was advanced by the company as the reason for Hanna's discharge. The reasons were eight in number. Out of this meeting, the company proposed disciplinary action of additional few days layoff. The union after objection acceded to the same.

Conclusion

This panel considered Mr. Meder's contention that mere existence of a strike on part of union was conclusive and required the issuance of sanction against the union, namely, revocation of maintenance of membership. This contention is claimed to be supported by the Chrysler case. It is his further contention that, with the above facts conclusively present in this case, this panel has no right to invoke a factual finding as to reasons for strike, whether it was authorized by union officials, or whether it was provoked in any way by management.

The review of the Chrysler case, as well as other cases decided by War Labor Board, does not support this contention. In the Chrysler case, a reference is made to the fact that production was burdened by a plague of strikes; and that the union authorized some despite the union claim that management provoked the same. It refers to fact that 66 strikes had occurred in one year. It is stated therein that the prime task of the National Board, however, is not merely to assess blame; of much greater importance in its duty to help solve problems of which industrial unrest is a symptom. The Board has the responsibility, therefore, to act upon the issues in this case in such a way as to minimize the frictions and stoppages which have already decreased the supply of tanks, etc. The removal of obstacles to maximum production requires:

1. Acceptance of the responsibilities of leadership by all union representatives in the manner already indicated

by the international representatives of union; and

2. Acceptance by the company of industrial relations policies adopted to changed conditions of collective bargaining.

The Chrysler decision is concluded by statement that there have been numerous and inexcusable work stoppages.

Not only is such decision predicated upon a factual finding as to existence of strikes, but refers definitely to causes which would deny company counsel's contention herein. Moreover, if true, the sitting of this panel as a fact finding body herein would be a useless gesture, as the existence of a strike not only is conceded by the disputants but was equally well known to the Regional Board, prior to the referring of the case to the panel. Further, if true, the Regional Board could have and would have automatically granted the company's demand.

The Chrysler case is a clarification of the mutual responsibilities of disputants to meet and dissolve their disputes in this war emergency. It is true that maintenance of membership was granted by management generally in reliance upon the mutually given pledge of labor not to strike for the duration. Such maintenance of membership was granted to assist responsible union leadership in carrying out this pledge and making continuous war production possible. However, it is well to point out that collective bargaining in its true sense places a responsibility on both parties that it be carried on in a manner such as will dissolve the particular disputes, prevent work stoppage, and result in continuous war production. The contract of the disputants arrived at thereunder likewise places a mutual responsibility on them to perform the same to meet the emergencies and the exigencies which may retard such production and create work stoppages. This burden is not one to be borne by either party in its entirety but calls for a mutual responsibility and an aiding and cooperating under the terms of their contract to prevent work stoppages and to establish continuous war production.

In the instant case, the union should have accepted their responsibility to the nation, the armed forces, and the war production by upholding their no-strike pledge under all circumstances. Although it is true that the union leadership was impressed by the peculiarities of the Hanna discharge, apprised the management of the unrest and the emergency created in the plant thereby, and felt that they had exhausted in good faith the grievance procedure of their contract through Steps 1 to 4; nevertheless, the union membership was obligated to exercise the patience which such leadership impressed upon them and should have sought the relief through the provisions of the Disputes Act. The provocation created by management can never be so burdensome that the union membership can revoke their no-strike pledge to the detriment of war production and the efforts of the armed forces.

The company, on the other hand, was fully advised by the union officials of the pending emergency created by their action in discharging Hanna and further apprised by the union in this particular case that their request for immediate grievance under the fourth step of the grievance procedure was essential. [Management refused] to aid and abet the union leadership in preventing the possible work stoppage by not only ignoring the letter submitted but also in the refusal to state such a meeting could be had at a specified time. It is well to point out that the record discloses that the plant manager, Squire, had the authority to immediately act thereon, and, in fact, the terms of the contract provided for a meeting to be held as soon as practical. Uppermost in the minds of both parties should have been the one thought to prevent a possible work stoppage and to take such immediate steps in cooperation as would have prevented the same. Petty attitudes and dissatisfactions should have been waived aside, and no less action can be held to fulfill their responsibility.

The manner in which the company handled the discharge of the ten-year employee and former union president was anything but satisfactory. Mr. Squire admits that at 4:00 o'clock on Oct. 4, 1944, he withdrew the employee's car and barred him from the plant so that he might further investigate the case and take the same up by Mr. Johnson for a final determination. The employee was barred at 7:00 a.m. on Oct. 5, 1944, and on Mr. Squire's advice was told to return at 9:00 a. m. when Mr. Johnson would be available. On his return, there was further delay, and, at about 10:00 a.m. of that morning, Mr. Squire, without in any

way contacting Mr. Johnson or having made a further investigation, discharged this employee. Mr. Johnson was available during this period. Such action on the part of management's representative does not imbue a confidence in union leadership or union employees necessary for a high morale in their war effort. The stand-off attitude of Squire displayed in his meetings with union officials subsequent to 10:00 a.m. on Oct. 5, 1944, in meeting their request for immediate action under Step 4 of the grievance procedure, and his resorting to the technicalities of the contract as a bar to direct action in this matter, was uncalled for and improper in view of the knowledge of the emergency given to him by the union leaders. Squire's action in refusing to advise the union president of the time already set for the grievance meeting while he was in the presence of the striking employees and the union president in the roll bearing department shows a total failure on his part to recognize any responsibility to prevent a work stoppage and, in fact, reflects his thought that such was the sole responsibility of union leadership. This record discloses that he had been advised of the gravity of the situation not only by the union leadership, but through the information relayed to him that the tool grinding department during its lunch period prior to 1:45 a.m. had held a meeting on the Hanna discharge. What he or the company stood to gain by the refusal to take any one of a number of steps to aid the union leadership in preventing the strike is hard to ascertain or recognize, particularly in view of the threat of substantial loss of war production.

In this particular case, both disputants have clearly failed to recognize their responsibility as set forth in the Chrysler case—the union members in their failure to follow their leader's advice in maintaining the no-strike pledge, and the company and its representatives in their refusal to take all necessary steps in an emergency to place their aid and cooperation with union leadership to prevent and avoid a work stoppage and loss of war production.

Both parties have been equally guilty in this case in their failure to recognize their wartime responsibility, namely, to prevent work stoppages.

It is the opinion of this panel that morally and legally neither party should gain or lose by their mutual irresponsibility and their failure to perform their wartime responsibility.

The panel would most certainly have been compelled to issue some sanction against the union for the strike of Oct 5, 1944, had it appeared that the company had taken the necessary steps to aid in the prevention of the same.

RECOMMENDATION

This panel recommends as follows:

1. That, notwithstanding the violation of the no-strike pledge by the union membership, the failure of management in this case to aid and cooperate with the union leaders under the contract to prevent the same makes it necessary to deny the request of the company that the maintenance - of - membership provision of the contract be revoked.

Signed by Carleton McIntyre, representing the public; Sam Fishman, representing labor; and Sidney Morgan, representing employers, dissenting with opinion.

Dissenting Opinion of Employer Representative

MAINTENANCE OF MEMBERSHIP

The panel report is not clear in its recommendation. I assume the chairman recommends standard maintenance of membership with a 15-day escape period.

It is my opinion that, before a union is entitled to maintenance of membership, there must be a clear showing that it is a responsible union. The strike record at Bower Roller Bearing this year is as follows:

Jan. 31, 1944—62 male employees, allegedly over discharge. No grievance filed to date of hearing (Sept. 6, 1944.) 460 females, allegedly over slowness of War Labor Board's decision. Total manhours lost—1,546½

Feb. 15, 16, and 17, 1944—Strike and picketing allegedly for inactivity of the War Labor Board. Returned on date of show-cause hearing before Regional Board. Total manhours lost —22,163

Oct. 5, 6, and 7, 1944—I received this panel report today and have observed by the newspaper accounts that there is a strike in progress at this plant. I do not know how many manhours will be lost in this strike, what caused the strike, or what the loss in

production of critically needed bearings will be.

I believe this record speaks for itself.

Maintenance of membership should be denied, not as a punitive measure as the chairman suggests, but because the union has not shown itself entitled to maintenance of membership under the published War Labor Board policy. In this connection, I refer the Board to the case of U. S. Gypsum Company (Kansas City), [18 War Lab. Rep. 682], Release B-1776, Oct. 4, 1944, in which the National Board remanded a case to the Seventh Region for "reconsideration and findings respecting the union's responsibility" for work stoppages on Nov. 14, 1943, and June 29, 1944.

I cannot believe the War Labor Board will condone the strikes in this plant above referred, all of which have occurred while cases were and are pending before the Board.

Signed by Sidney H. Morgan, representing employers.

Supplementary Dissenting Opinion of Employer Representative

To supplement my previous dissent, please bear in mind the fact that 28,500 man hours were lost in the third strike which took place Oct. 5, 6, and 7, 1944.

When maintenance of membership was originally ordered by the War Labor Board in its directive of Dec. 18, 1943 (Case No. 111-3167-D), the majority stated in their "Report and Recommendations" as follows:

"Fortunately in this plant, at least within the past year, production has suffered virtually no interrupation by labor trouble: These parties have a fine record of cooperation."

The first majority report of this panel under "Conclusion" starts with the following statement:

"To uphold the company's contention herein calls for this panel to recommend sanctions of a punitive nature."

Quoting again from the second paragraph:

"In view of the amicable relationship existing between the parties prior to the unauthorized strikes and existing as well subsequent thereto * * * "

It goes on to "severely reprimand" unauthorized strikes and then recommends continuation of the maintenance of membership.

At this point, strike number three occurred and, as a result, another hearing was held per attached report.

The majority now find "both disputants have clearly failed to recognize their responsibility * * *"

One pertinent fact which must not be overlooked is that this strike was executed before the matter had been exhausted in the grievance procedure. The first three steps had been navigated in a rather unorthodox manner, while the company was not given its conventional and contractual opportunity to comply with its part of step number four.

With this sequence of events and if the withdrawal of maintenance of membership is a punitive measure as this majority panel report states, I believe the Board should so order, with the view of encouraging responsibility and respect of the union membership for their agents, their contract, the War Labor Board, and their country.

Signed by Sidney H. Morgan, representing employers.

LYONS, HARRIS & BROOKS PRINTING CO.—

Decision of National Board

In re LYONS, HARRIS AND BROOKS PRINTING COMPANY [Macon, Ga.] *and* INTERNATIONAL TYPOGRAPHICAL UNION, LOCAL 93 (AFL). Case No. 111-11208-D, June 4, 1945 (made public Aug. 7, 1945).

WAGES—COST OF LIVING ADJUSTMENTS—Application of Little Steel formula

Regional Board should reconsider denial of Little Steel wage adjustment to employees of one commercial printing firm where denial was result of applying formula to the three commercial printers in area as a unit. Parties contended (1) that Little Steel increase would be due if formula were applied to instant company as separate unit and (2) that, although rates are identical with those paid by other two firms, they are below those paid by newspapers in area.

For other rulings see Index-Digest 245.3195 in this or other volumes.

Unanimous decision of Board remanding decision of Regional Board IV (Atlanta). Public members concurring: Lewis M. Gill and Dexter M. Keezer. Labor members concurring: Ray McCall and Delmond Garst. Employer members concurring: Lee H. Hill and Earl Cannon.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition filed jointly by the parties for review of the Fourth Regional War Labor Board's directive order dated Jan. 9, 1945, in the above entitled case, hereby takes the following action:

I. The case is hereby remanded to the Fourth Regional War Labor Board for consideration.*

Directive Order of Region IV (Atlanta)

Jan. 9, 1945

I. The Regional War Labor Board for the Fourth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Wages

(a) The requested wage increases are hereby denied, on the basis that the rates are now stabilized and that Little Steel has been exhausted.

(b) The agreed upon increase of 30 cents per week for each additional machine cared for by machinist operators is hereby approved.

(c) The approval under (b) above shall be made retroactive to June 1, 1944.

2. Vacations

(a) Vacations with pay shall be granted according to the established policy of the War Labor Board, one week for one year's service and two weeks after five years for all employees as of July 1, 1944.

(b) Vacation pay shall be computed at 2 per cent of the total annual earnings for each week of vacation.

The procedure to be followed in making retroactive payment to those employees who have quit or been discharged shall be in accordance with the National Board's Resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board, and, unless otherwise directed by the National War Labor Board, shall take effect 14 days from the mailing date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect (subject only to the provisions of Par. (V), and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

* ED. NOTE: The company originally asked for a wage increase for employees involved on a Form 10 which was not signed by the union. A dispute followed denial of the company's request by the Regional Board. The company is one of three commercial printing establishments in Macon, Ga. The Regional Board handled all three cases together and denied the requested increase on the ground that the Little Steel formula had been exhausted for the three as a unit. It refused to consider the instant company separately, although an increase would be due under the Little Steel formula if this were done, on the ground that the rates in the three companies were now uniform and an increase to this company would be unstabilizing. The company and the union jointly petitioned the Board for review, contending that denial of the increase is a hardship on them because of the great difference in the wages being paid printers on the Macon newspapers and in the commercial shops. Journeymen and machine operators on the newspapers receive $46 weekly for day work and $48 for night work while the subject employees receive $42 weekly for day work and $44 for night work. (Information obtained from WLB staff.)

V. As required by Executive Orders No. 9250 and 9328, as supplemented by the directive of May 12, 1943, Par. I of this order shall in any event become effective only upon determination by the Office of Price Administration that the wage increase and vacation plan ordered in that paragraph will not require any change in price ceilings or, if no such determination is made, then upon approval by the Director of Economic Stabilization. The parties will be promptly notified of such action.

As provided in Sec. 802.40 of the Rules of Organization and Procedures of the National War Labor Board, this order is subject to review by the National War Labor Board at any time on its own motion.

Signed by Alvin B. Biscoe and Paul L. Styles, public members; P. S. Arkwright and T. G. Woolford, employer members, subject to dissent on 2-a-b; and H. S. Williams and John S. Martin, labor members, subject to dissent on 1-a and 1-o.

Report and Recommendations of the Panel

Nov. 19, 1944

This dispute was certified to the War Labor Board on Oct. 18, 1944, and was referred to this panel for hearing, report, and recommendations. At the oral hearing before a tripartite panel on Nov. 9, 1944, in Macon, Ga., all parties involved in the case had a full opportunity to present oral evidence and arguments on the issues in dispute. Three companies are involved, with approximately 12 employees, who are members of the union concerned in the dispute. Seventy-five per cent of the production of these companies is directly related to the war effort.

Mr. H. T. Dworet served as the panel assistant.

ISSUES

I. Wage increase demands,

II. Effective date of wage increase, and

III. Vacation with pay.

THE PARTIES

There are three companies involved, and actually are three cases. However, since the panel's report and recommendations are presented as affecting all three similarly, we include all three under this section of the report and in [the] following sections.

The Lyon, Harris and Brooks Printing Co., 6 employees; the J. W. Burke Printing Co., 3 employees; and the American Printing Co., 3 employees.

The union involved is the International Typographical, Local 93 (AFL). Other unions representing other crafts in the company's are the International Brotherhood of Bookbinders and the International Printing Pressman's and Assistants Union.

BACKGROUND

Lyon, Harris and Brooks Company have operated a union shop for over twenty years, and for approximately ten years have signed written contracts covering members of the union working in the company's composing room. The last contracts were dated June 1, 1942, to May 31, 1943.

J. W. Burke Company signed a contract covering composing room employees of the company who are union members, effective May 29, 1942, for a term of one year, ending May 29, 1943.

The American Printing Company signed a contract covering composing room employees of the company who are union members, effective July 1, 1942, for a term of one year, ending July 1, 1943.

The relationships between these companies and the union have always been cordial. When renegotations were undertaken there was no disagreement. The companies, now acting in unison, agreed to sign contracts whose expiration date would be the same. They also agreed on the wages to be paid for the new contract June 1, 1943, to May 31, 1944, subject to the approval of the War Labor Board. At this time, contracts were being renegotiated with another union also, namely, the International Printing Pressman's and Assistants Union. The companies, in June 1943, filed the National Labor Relations Board Form 10, thinking the terms of contract with both unions could thus be acted upon, using only the one Form 10. The terms submitted in National Labor Relations Board Form 10 were rejected by the Wage Stabilization Director in April 1944, on the grounds that they could not be granted under the provisions of the Little Steel formula. The company believed that the Typographical Union had intended to be party to the Form 10, although it was later found that, for some reason, the international representative of the Typographical Union had not signed

the form, while the representative of the Printing Pressman's and Assistants Union had signed it. Subsequently, the Typographical Union sought to appeal the decision of the Wage Stabilization Director but was informed that it was not party to the Form 10 application, since they failed to sign it.

On Apr. 1, 1944, the Typographical Union sought ways and means to get the increases desired. In May 1944, negotiations were again reopened. On Sept. 20, 1944, Conciliator Judge Cone intervened in the case, but no agreement was reached. Thereafter, on Oct. 18, 1944, the case was certified to [the] War Labor Board and the hearing date was set.

I. WAGE INCREASE DEMAND

The Union now requests an increase of approximately $10 (ten dollars) per week for daywork and $11.20 (eleven dollars and twenty cents) per week for nightwork, while the company agrees to pay an increase of $2.30 (two dollars and thirty cents) per week for daywork, and $2.60 (two dollars and sixty cents) per week for nightwork.

Union Position

The union contends that this wage increase is not unreasonable in view of the increased cost of living. They quote findings of a War Labor Board panel in the case of the dispute between the aluminum workers and the Aluminum Company of America (in press dispatches from Washington under Sept. 25, 1944, date line). These findings, they contend, show increased cost of living as being from 23 to 45 per cent since wage ceilings were fixed on Jan. 19, 1941.

Company Position

The company agrees to pay the wages submitted on National Labor Relations Board Form 10, which the Wage Stabilization Director rejected on grounds before stated.

Findings

The panel found that the union's demands were surprised demands and greatly exceeded any former request for increase to the company. As recently as Nov. 5, 1944, the company has renewed its wage offer as stated above, and, while it has been rejected by the union, no counterproposal was made by the union.

The panel was advised that wage increases above the Little Steel formula had been granted on occasions. It is considered that the union demands are excessive.

II. EFFECTIVE DATE

The union contends that the effective date of wage increase should be June 1, 1943. The company contends that the date of increase of wages should be the date of approval by the War Labor Board.

Union Position

The union holds June 1, 1943, to be the proper effective date of wage increase since on that date the company agreed to pay them by signing a new contract which was subject at that time to War Labor Board approval.

Company Position

The company holds the effective date of increase to be the date of approval by the War Labor Board since they so stated it in National Labor Relations Board Form 10, which they supposed a representative of the Typographical Union had signed.

Findings

The panel discussed this matter at length. They are of the opinion that the union is plainly guilty of negligence in the matter. They could hardly conceive of a union letting matters such as these go on comparatively unattended for so long a time. There undoubtedly is a great deal of confusion involved in the case. The panel could get no reasonable explanation of the fact that, while both of these unions were expected to sign National Labor Relations Board Form 10, and both seemingly expected to do so, the Typographical did not sign. There has been no wage increase since June 1, 1943, but the panel can find no reason, for making it effective to that date, should an increase be granted. The panel did find the companies agreeable, in the interest of settlement, to set the effective date as of June 1, 1944, the normal renewal date of contract.

III. VACATION WITH PAY

The union asks for vacation with pay of one week for all union members who held positions during the 12 months prior to June 1, 1943, and of two weeks' vacation with pay for those

who held positions for four (4) years prior to that date.

Union Position

It is the policy of the International Typographical Union to seek paid vacations for all of its members and many contracts have thus been signed. They appeal also the War Labor Board policy on vacations.

Company Position

The company opposes the demand for vacation with pay because:

1. It would increase cost of production.

2. It would render the acute manpower shortage even more burdensome.

3. It deprives the company of granting vacations with pay on the basis of meritorious service.

4. Formerly contracts were signed amicably without a paid vacation clause. Now, since the Wage Stabilization Director refused wage increases, the union has sought to use the measure as a wedge to gain unreasonable wage increases.

Finding

The panel recognized the War Labor Board policy on paid vacations. It recognized also that, should paid vacations be granted, the company's assertion is well taken. The panel believes that these companies will undoubtedly apply to the OPA for relief in the matter of price ceilings. Upon investigation it was found that the price ceilings were pegged during a time when, in Macon, various companies were indulging in a race of under bidding each other for the available business.

RECOMMENDATIONS

1. That the following wage scales be approved:

Classification	Rate per Week Day	Night
Foreman	$48.30	$50.60
Journeyman	43.70	46.00
Machine Operator	43.70	46.00
Machinst Operator	46.00	48.30
Care for Ad. Mach.	2.30	2.30

Note: These were agreed upon by both parties subject to approval of National Labor Relations Board Form 10.

2. That the effective date be set as June 1, 1944, that being the date when approval of the Form 10 could have been expected and that being the date of contract renewals.

3. That vacations with pay be granted according to the established policy of The War Labor Board, one week for one (1) year service, and two (2) weeks after five years, for all employed as of June 1, 1944.

SEATTLE BAKERS BUREAU, INC.—

Decision of National Board

In re SEATTLE BAKERS BUREAU, INCORPORATED [Seattle, Wash.] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 227 (AFL). Case No. 111-2995-D, June 22, 1945 (made public Aug. 7, 1945).

WAGES—GOING WAGE RATES—Commission paid employees—Determination of going rates

Regional Board's order raising base pay of commission and non-commission driver salesmen from $55 to $60 for 48-hour workweek is vacated where, contrary to WLB policy, Regional Board included incentive earnings in data used in setting bracket in order to justify $60 bracket.

For other rulings see Index-Digest 250.300 and 250.060 in this or other volumes.

Majority decision of Board amending decision of Regional Board XII (Seattle). Public members concurring: Edwin E. Witte and Nathan P. Feinsinger. Labor members dissenting on acceptance of company petition and on Par. I: Elmer E. Walker and John Brophy. Employer members dissenting on Par. II: Walter Knauss and Earl Cannon.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, in so far as it relates to salesmen-driver rates, the petition filed by the company for re-

view of the Twelfth Regional War Labor Board's third supplementary directive order dated Mar. 12, 1945, and having reviewed the merits of the case with respect to this issue, hereby orders:

I. The said directive order of Mar. 12, 1945, in so far as it relates to an ordered increase from $55 to $60 per week for salesmen-drivers, is hereby vacated.

II. The remainder of the petition for review is denied.

Third Supplementary Directive Order of Regional Board XII (Seattle)

Mar. 12, 1945

The Twelfth Regional War Labor Board, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

All clauses and provisions of the directive order issued in this matter May 24, 1944, with any subsequent additions or corrections thereto, are herewith affirmed and reordered except in so far as the same may be modified, corrected, or changed in the statements below.

The classification of special delivery men in Sec. II of the directive order of May 24, 1944, is amended to read $51.00 weekly and $1.0625 hourly.

Any petition for review already filed with respect to a previous directive order issued in this matter and any answer to such a petition shall be considered as withdrawn unless parties otherwise indicate in writing within the seven-day appeal period.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect eight days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board or a petition for reconsideration is filed with the Twelfth Regional War Labor Board, in which event this order shall be suspended until disposition of the petition for review or petition for reconsideration unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

Signed by George Bernard Noble, Clark Kerr, and Vernon A. Mund, public members; J. J. Rohan, Charles W. Vahlbusch, and John M. Fox, labor members; and George W. Farnsworth, Gerry Weaver, and M. J. Muckey, employer members, subject to dissent.

Directive Order of Regional Board XII *

May 24, 1944

The Twelfth Regional War Labor Board acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Excutive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

I. The contract between the parties shall make provision for one week's vacation with pay after employment by the same employer for one year and two weeks' vacation with pay after continuous employment by the same employer for five years.

II. The base rate for salesmen drivers shall be $60.00 per week provided that those employees receiving com-

* Ed. Note: On June 26, 1944, after reconsidering its May 24, 1944, order the Regional Board issued a first supplementary directive order affirming the earlier order. On July 18, 1944, however, the Regional Board issued a second supplementary directive order reducing the awarded weekly rates for classifications other than salesmen drivers to $51, $43, $40, $36, and $26, respectively. These reduced rates were the rates in effect prior to the Regional Board's orders.

missions which have brought them compensation above $60.00 per week shall have their commission system so revised that total earnings will not be either increased or decreased as a result of this award.

In other classifications involved, the contract shall contain the following scale of wages:

Classification	Weekly	Hourly
Special Delivery Man	$55	$1.15
Loader	44	1.10
Checker	42.50	1.065
2nd 6 months	39	.99
1st 6 months	30	.75

The request for a uniform $5.00 per week increase to all office workers is denied, and this disputed issue is referred back to the parties with instructions to reclassify and evaluate the employees in this classification in accordance with the classifications and job descriptions used by the Twelfth Regional War Labor Board in establishing the "bracket" wage scale for clerical employees.

Any person receiving more than the rate provided herein for his job classification shall not be increased or decreased by reason of this directive order.

III. The foregoing wage adjustments shall be made retroactive to May 1, 1943.

Any employee coming within the terms of the foregoing who has either quit or been discharged since May 1, 1943, shall receive the amount of the increase for his classification up to the date upon which his employment with the company terminated.

The company and the union shall promptly send a joint letter to each such employee at his last known address, advising him of his rights under this provision. The employee must mail his written application for retroactive pay to the company within 60 days after the day of mailing of the joint letter. The company may voluntarily make the payment in any case even though the 60 days have elapsed. The company shall be obligated to make the payment if good cause is shown for the application being delayed beyond the 60 days. Failure to make the payment where good cause for the delay is alleged may be taken up by the union as a grievance. The 60-day limitation shall not apply to employees who have become members of the armed forces of the United States.

The foregoing paragraph relating to retroactive pay shall not apply to any employee not on the company's payroll for a total of 15 days during the period of retroactivity provided for herein.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 15 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board or a petition for reconsideration is filed with the Twelfth Regional War Labor Board, in which event this order shall be suspended until disposition of the petition for review or petition for reconsideration unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

Signed by George Bernard Noble, Clark Kerr, and Father Francis E. Corkery, public members; J. J. Rohan, Leo F. Flynn and Robert Thomas Baker, labor members; and Adolph W. Engstrom, George W. Farnsworth, and Lawrence E. Karrer, employer members, subject to dissent.

Supplementary Opinion of Regional Board XII

Apr. 27, 1945

KERR, Public Member:—This opinion supplements the majority opinion of May 20, 1944, a copy of which follows. The National War Labor Board requested the Twelfth Regional War Labor Board to establish brackets as the basis for processing the case. According to the rules of the National War Labor Board, brackets covering jobs within the jurisdiction of regional boards shall be recommended by the

regional trucking panels. The trucking panel for the Twelfth Regional War Labor Board made a careful survey of the factual situation and recommended a bracket of $60 per week for bakery salesmen. A memorandum to the Regional Board by the chairman of the trucking panel, a dissenting statement by the industry member of the trucking panel, and a table which accompanied these two communications [were also issued].

The Board gave careful consideration to the information submitted by the trucking panel and decided to affirm the recommendation of the majority of that panel. Inasmuch as the panel has been given certain jurisdiction by the orders of the National Board and has become familiar with the problems within that jurisdiction, the Regional Board is loath to reverse recommendations of the panel unless they appear to be clearly in error.

On the merits of the trucking panel's recommendation, it should be noted that commissions have been paid in the industry over a long period of time and have become virtually part of the base wage. In addition, the Twelfth Regional War Labor Board has included bonuses and incentive pay in several other cases where such earnings were a significant part of compensation, as in banks and in the garment industry. The Board was also influenced by the fact that in Tacoma, closely adjacent to Seattle, the base rate, including contractual commissions, amounts to $60 or more, as is pointed out in the memorandum of the industry member of the trucking panel.

The Board was also influenced by a prior determination of the Trucking Commission of the National War Labor Board which had set a rate universally applicable to other comparable salesmen drivers in the Seattle area equivalent to $66 for a 48-hour week. The Regional Board could only presume that the National Trucking Commission was at least as familiar with the policies of the National War Labor Board as is the Twelfth Regional War Labor Board far removed from the National Office. Unless the National Board wishes to hold that these several prior decisions of its Trucking Commission are illegal and should be reversed, it is difficult to see how it can help but uphold the action of the Twelfth Regional War Labor Board which established a rate 10 per cent less than that deemed necessary for all comparable salesmen drivers by the National Trucking Commission.

Opinion of Regional Board XII

May 20, 1944

DRIVERS' RATES

KERR, Chairman:—This case involves the Seattle Bakers Bureau, Inc., of Seattle, Wash.; and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Seattle Local No. 227 (AFL). The major issue in dispute and the only one to be treated in this opinion is the question of a wage increase for salesmen drivers. Previous contractual relations between the parties have provided for a base rate of $55 per week. Several of the companies have paid commissions in addition, but these commission systems have never been incorporated into the collective bargaining contract.

The trucking panel of the Twelfth Regional War Labor Board, which originally heard this case, recommended an award of $5 per week to all bakery salesmen drivers. The Twelfth Regional War Labor Board has provided that the base rate of salesmen drivers should be increased to $60 per week, instead of $55, but that "those employees receiving commissions which have brought them compensation of above $60 per week shall have their commission system so revised that total earnings will not be either increased or decreased as a result of this award."

The industry members of the Board have dissented from this action. The award of the Board is based primarily on the three following considerations:

(1) All other salesmen drivers in the Seattle area having no contractual commission arrangements receive a minimum of $1.37½ per hour which would amount to $66 per week if they worked the same 48 straight-time hours as the bakery salesmen. While the bakery salesmen comprise the most important group of salesmen drivers not receiving contractual commissions, their base rate of $55 seemed to the majority of the Board to be unduly low as compared with the rates for all other similar employees in the area.

(2) In Tacoma, which is located in the same general labor market area as Seattle, bakery salesmen receive a base rate of $55 and a contractual commission which yields a minimum

of $5 or total base earnings of $60 per week. It appeared to the majority of the Board that a minimum guaranteed rate of $60 in Seattle could not be considered unreasonable, particularly since Seattle is located in the same labor market area and is a community with a much greater population. It should be noted that, on the same day the Board awarded the increase of $60 for the Seattle salesmen, it denied an increase above the $60 guaranteed minimum for the Tacoma drivers.

(3) At the present time in the Seattle area, there are approximately 344 bakery salesmen covered by the contract in dispute. Of these 344 salesmen, only 71 or approximately 20 per cent receive no commissions and have had their earnings confined to the base rate of $55. The remaining 273 drivers receiving commissions have averaged approximately $70 per week. The average for all salesmen drivers has been approximately $67 per week. Consequently, it appeared to the majority of the Board that a gross inequity existed for the 71 drivers receiving no commissions.

In order partially to eliminate such inequity, the Board awarded a five-dollar increase in base rates and has provided, as mentioned above, that persons receiving commissions shall not have their earnings increased by the award. The result will be that the gross inequity previously existing will be substantially alleviated.

The majority of the Board feels that its award is amply justified by the above considerations. The base guaranteed rate for bakery salesmen drivers, as a result of this award, will not be as high as that received by other salesmen drivers similarly situated in the area. It will bring the guaranteed rate in Seattle to the level prevailing in Tacoma. It will partially eliminate the gross inequity which has existed as between a minority of employees and the great majority receiving substantially higher earnings.

Supplementary Dissenting Opinion of Employer Members of Regional Board XII

Mar. 10, 1945

DRIVERS' BRACKETS

FARNSWORTH, MUCKEY, DIXON, and WEAVER, Employer Members:—The undersigned industry members of the Twelfth Regional War Labor Board herewith file and dissent to the action of public-labor majority in (1) setting a "bracket" for salesmen drivers, whether receiving commissions or not, at $60.00 per week, and (2) as a result of setting the "bracket" for salesmen drivers at $60.00 per week, reaffirming their decision in the directive order dated May 24, 1944.

Dissent is specifically directed against the fixing of a $60.00 wage bracket for the following reasons:

1. The method and figures used in setting the $60.00 per week bracket were improper. The $60.00 figure set was based on take-home pay which included voluntary incentive commissions.

2. The setting of the improper $60.00 bracket for the salesmen drivers provides the only justification, on an intra-plant basis, for increases allowed in other classifications.

3. The $60.00 bracket improperly changes the voluntary incentive salesmen commission plan which is not a part of the employment contract without the consent of employers and employees.

4. The wage increase to $60.00 violates the Little Steel formula. The employees involved had already realized increases from 17 per cent to 25 per cent.

Background

On July 31, 1943, this case was certified to the National War Labor Board and in turn on Aug. 5, 1943, to this Regional Board. A directive order was issued on May 24, 1944, part II of which directive reads in part as follows:

"The base rate for salesmen drivers shall be $60.00 per week provided that those employees receiving commissions which have brought them compensation above $60.00 per week shall have their commission system so revised that total earnings will not be either increased or decreased as a result of this award.

"In other classifications involved, the contract shall contain the following scale of wages:

Classification	Weekly	Hourly
Special Delivery Man	$55.00	$1.15
Loader	44.00	1.10
Checker	42.50	1.065
2nd 6 months	39.00	.99
1st 6 months	30.00	.75"

The employers, knowing that employees had already received increases in excess of the Little Steel formula

and that any further upward adjustment would exceed "minimum sound and tested rates" in the area for bakery salesmen drivers, filed a petition for review with the National War Labor Board. After considering this petition, the National Board modified the Regional Board's directive on wages and on Oct. 27, 1944, issued a directive order providing as follows:

"Wages: The case is remanded to the Twelfth Regional War Labor Board for reconsideration and disposition in light of the following instructions:

"1. A bracket rate shall be set for those bakery salesmen drivers and nonsalesmen who are not employed on a commission basis.

"2. An increase in the 55-dollar rate for commissioned bakery drivers shall

"3. The question of intra-plant inequity shall be considered on the basis of the results of the Regional Board's consideration of Pars. 1 and 2 above."

Board Action

Par. 1 above of the National Board's directive on wages seems to clearly instruct the Regional Board to set a bracket rate for those bakery salesmen drivers and nonsalesmen who are not employed on a commission basis. In taking this action the National Board undoubtedly had in mind Board policies which have been established for setting "brackets."

National Board policies are clear. We are expected to follow them. The Wage Stabilization Manual issued June 1, 1944, by the Wage Stabilization Division of the National War Labor Board states as follows:

"A bracket is a group of stable rates existing for a given job in a given labor market."

and goes on to describe the two main kinds of wages and salary rates—time and incentive rates. In connection with these two kinds of rates it is significant to note the National Board's instructions as to their use in setting brackets, quoting:

"It should be clearly understood that bracket minima for particular job classifications should reflect only time or hourly rates. In other words, the straight-time average hourly earnings of incentive workers for a given job must not be used as such in calculating the bracket minimum for such jobs." (NWLB Wage Manual, p. 29.)

Rather than follow the specific instructions contained in both the National Board's directive order of Oct. 27, 1944, and the Wage Manual, the majority of this Board has in this case set a bracket by arriving at a weighted average based on take-home pay, such take-home pay including all payments, both hourly rates and voluntary incentive commissions, received by all bakery salesmen drivers during a specific payroll period. To emphasize the error of the public-labor majority in setting the $60.00 bracket, it seems necessary to summarize the take-home amounts which were improperly used.

Amount of Pay	No. of Employees
$51	8
55	69
56-$175	206

Of the 206 employees taking home from $56 to $175 per week, the number of employees at any one given rate did not exceed 15. The above figures included salesmen receiving incentive voluntary commissions which were not a part of their employment agreement or contract.

If the majority had cared to look for a significant cluster even in the figures improperly used, they would have found it not at $60.00, but at $55.00.

In order to arrive at this improper conclusion apparently for no other reason than to justify their original directive order which did not meet the approval of the National Board, the majority now side-steps the clear instructions of the National Board.

1. The National Board asked that "a bracket rate shall be set for those bakery salesmen drivers and nonsalesmen who are not employed on a commission basis."

2. The majority instead fixed a $60.00 bracket for salesmen drivers whether receiving a commission or not.

This was not necessary. The Board had available adequate and proper data which would properly supply the bracket requested by the National Board. The data is as follows:

Exhibit A

Schedule of base pay and number of bakery salesmen drivers and nonsalesmen employed at said base pay, same relating to drivers who receive no commissions:

Base Pay	No. Employed
$51.00	8
55.00	51
56.00	7
57.50	6
59.00	1
60.00	2
Total	75

Exhibit B

Schedule of base pay of all drivers, same including salesmen drivers and nonsalesmen who receive no commissions and also salesmen drivers who receive commissions.

Base Pay	No. Employed
$51.00	8
55.00	259
56.00	7
57.50	6
59.00	1
60.00	2
Total	283

Obviously the bracket should be $55.00. Sixty dollars is ridiculous, improper, and without foundation. It is contrary to National Board policy and violates Little Steel. To predicate other increases on $60.00 for salesmen is objectionable in like manner.

To allow the majority decision to stand would be dangerously wrong in this case and would, as a precedent applicable to other cases, bring chaotic results.

This decision should be reversed.

Dissenting Opinion of Employer Members of Regional Board XII

May 24, 1944

WAGES

MUCKEY, ENGSTROM, and FARNSWORTH, Employer Members:—In view of the importance of this case and our strong conviction that the decision of the majority is inconsistent with the policies which the Board has been directed to follow, we wish to explain fully the reasons for our dissent.

We simply say that a wage increase should not exceed the amount allowable under the Little Steel formula or some established exception thereto.

Majority Considerations

The majority opinion devotes itself principally to the major issue in dispute and is based on three considerations therein outlined. The three considerations relied on by the majority, we believe, are untrue in fact and therefore, purely argumentative. It is unfortunate but necessary in the interests of fairness and truth to say that the considerations relied on, as disclosed by the majority opinion, reflect a lack of knowledge of the facts, business practice, and problems involved in this case.

Referring to the three considerations:

(1) We question, and the record does not show, that all other salesmen drivers in the Seattle area having no commission arrangements receive a minimum of $1.37½ per hour. It may be true that a few drivers working for a few companies who were urged in on a Form No. 10 after this dispute case started may have been granted $1.37½ per hour. Those are a few specialty driver salesmen of potato chips, popsickles, pickles, etc., numbering not to exceed 55 or 60 in western Washington. It is inconceivably unfair and contrary to recognized labor board policy to regard such isolated, nonrelated, and noncomparable wages as constituting a recognizable wage rate bracket.

Admittedly, the bakery salesmen numbering approximately 345 in Seattle alone are the most significant group. The employers in this case employ all the labor in Seattle in the classification involved. It is more reasonable and fair to say that their existing wages fixed the sound and tested rates in the area.

(2) It is true that Tacoma sales drivers have a base rate of $55.00. It is not true that they have a total base of $60.00, and it is likewise not true that Tacoma drivers have had a guaranteed minimum of $60.00 per week. The only difference between Seattle and Tacoma is that in Tacoma the commission is contractual; in Seattle, it is voluntary. The payment of commissions in both cities has continued unchanged. The minimum guaranteed rate in both cities has been the same at $55.00. In fact, driver salesmen in both cities actually make much more than $60.00 per week, including commissions. Referring again to a statement in the majority opinion, it is a more correct statement to say that on the same day the Board awarded the increase to $60.00 for Seattle salesmen, it denied an increase above a $55.00 guaranteed minimum for Tacoma sales drivers.

(3) The record does not establish that the average for all sales drivers is $67.00 per week. It is more than that, over $70.00 take-away pay. It is not correct to say that 71 salesmen, as the majority infer, receive no commission. The majority completely overlook the fact that the 71 drivers, more or less, referred to are not salesmen or sales drivers at all. They are merely truckers—just special drivers—not directly related to the sales organization and sales functions of the business. The majority opinion overlooks this real and important distinction. The truckers receive overtime, not commissions. The sales drivers receive commissions, not overtime. The truckers are not salesmen and perform a definitely different job. They are not comparable to salesmen. Their status and rates and wages are well established historically. The record does not disclose any alleged or proven inequity with reference to their rates of pay. No difference exists which does not generally prevail between incentive and nonincentive workers. We believe that no gross inequities exist, and to say that they do is purely argumentative and not based on fact or proof.

Little Steel Increases

Having answered the three basic considerations of the majority opinion, we must call attention to the record in the case which shows that all employees have received Little Steel wage rate increases from 17 per cent to 25 per cent in all various classifications.

It follows that further increases cannot be justified unless the case falls within one of the exceptions to the Little Steel formula, which we are empowered to recognize. We believe that no intra-plant inequities have been established and that no inter-established inequities exist. The only intimation of such assumed inequities in the majority opinion is based on erroneous assumptions derived from noncomparable situations. This is not one of the rare and unusual cases where above minimum adjustment is highly essential to the success of the war effort. Seattle bakeries, as to products and services, have fully served the war effort up to this date without bread price increases, and there has not been any claim or intimation to the contrary. Before an increase is given in a case such as this, it is only reasonable to consider the overall pay received by the sales drivers. They are very well paid in comparison to their previous pay and in comparison to the pay of other sales drivers. No valid reason exists for increasing their rates. As for the truckers, considered as a group, they are not as well paid overall but have different work and different responsibilities, and there is no recognized reason or basis for increasing their rates. It is believed that a presumption exists against a further increase in such a case as this.

The panel report predicated wage increases of certain other employees upon the wage increases of salesmen and drivers. The foregoing comments are, therefore, applicable thereto. Such other employees have also received Little Steel increases not less than 17 per cent and up to 25 per cent. No wage increases for employees in any other classification are deemed proper in this case for the reasons above outlined.

Vacations

The panel report recommended no vacation increase. With this we agree. Many employees have received pay in lieu of vacations during the wartime. No good purpose would be served by increasing the heretofore established and reasonable vacation period of one week, and we believe it proper to adhere to the previously expressed policy of not changing reasonable vacation plans during the war.

The vacation increase in all events would aggravate [the] wartime manpower shortage. Retroactively applied, the shortage would be worse and definitely and unjustly inflationary as well.

The record shows that the present rates of Seattle bakery employees involved are equal to the highest in the United States. To increase them would be a most inflationary action, and the effect would be disturbing in the entire bakery industry nation-wide. Most immediately, an increase in this case would unsettle previously existing differentials between those favored and thousands of other bakery employees not here involved who would raise the cry of inequities. The fact is that numerous food drivers without commissions in the Seattle area now receive a minimum of from $1.00 to $1.15 per hour. They in turn would be dissatisfied, and the disturbance would be far reaching.

The evidence available to the Regional Board in this case fails to sup-

port the majority opinion. We insist that there is such a contravention of Board policy, that this Board fails to do its duty when it approves a wage increase retroactively applied for a year unless there is clear and distinct support for the increase in the established wage policies of this Board. The majority, in increasing vacations from one to two weeks after five years with possible retroactive effect, have also contravened Board policy. The effect can only be inflationary with harsh and unfair demands placed on employers. It is significant that the employers, by an order in this case, will be required to pay retroactive penalties of thousands and thousands of dollars. This is a crushing burden which these employers, by no stretch of the imagination, could have possibly anticipated. The action here taken by the majority constitutes a great threat to all industry, but particularly to its small members who may find themselves confronted with a retroactive wage award of this Board and penalties which will imperil their ability to keep their business alive and furnish bread to the people.

We sincerely hope that this dissent will be viewed by our fellow workers on the Board, not as a useless complaint but rather as a record of what we feel are good reasons for disagreeing with the majority. We sincerely trust that these reasons will have some influence on the administration of labor board policy.

AMERICAN BRAKE SHOE CO.—

Decision of National Board

In re AMERICAN BRAKE SHOE COMPANY, AMERICAN FORGE DIVISION, GREAT LAKES PLANT [Chicago, Ill.] *and* UNITED FARM EQUIPMENT AND METAL WORKERS OF AMERICA, LOCAL UNION 164 (CIO). Case No. 111-6503-D, May 30, 1945 (made public Aug. 7, 1945).

VACATIONS—Eligibility for paid vacations—Bonus in lieu thereof

Bonus of three per cent of straight-time earnings which was previously paid to all employees in lieu of vacations should be continued with respect to employees who, at time of vacation period, are not eligible for vacation under vacation plan directed by Regional Board. Board accordingly amends Regional Board's order which directed elimination of bonus plan and establishment of one-for-one and two-for-five vacation plan with vacation pay being three and four per cent of straight-time earnings for one and two weeks' vacation, respectively.

For other rulings see Index-Digest 205.332 and 205.700 in this or other volumes.

Majority decision of Board amending decision of Region VI (Chicago). Public members concurring: Lewis M. Gill and Dexter Keezer. Labor members concurring: Delmond Garst and James A. Brownlow. Employer members dissenting: Earl Cannon and Walter Knauss.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition for review filed by the union in the above entitled case and having reviewed the merits of the case, hereby orders:

I. The terms and conditions of employment set forth in the Sixth Regional War Labor Board's modified directive order dated Feb. 17, 1945, in this case shall govern the relations between the parties, with the following amendment:

Any employee not eligible for a vacation at the time of the vacation period shall then receive 3 per cent of his straight-time earnings for the period of his service.

II. The terms and conditions of employment set forth in said directive order of Feb. 17, 1945, as herein modified shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Modified Directive Order of Regional Board VI (Chicago)*

Feb. 17, 1945

The Regional War Labor Board for the Sixth Region, acting as the duly authorized agent of the National War

* Modifying the directive order dated Sept. 29, 1944.

Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 3, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and upon reconsideration reaffirms its previous action as set forth in the directive order dated Sept. 29, 1944, with the following modification of Sec. 2 of said order and orders that:

Employees with one or more but less than five (5) years of service shall receive one week's vacation with pay computed at the rate of three (3%) per cent of their average straight-time hourly earnings during the year preceding the vacation period. Employees with five or more years of service shall receive two weeks' vacation with pay computed at the rate of four (4%) per cent of their average straight-time hourly earnings during the year preceding the vacation period.

The above vacation plan supersedes and is in lieu of the present three (3%) per cent bonus.

The foregoing terms and conditions shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect seven days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board through the Sixth Regional Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree. Notwithstanding any other provisions of this paragraph, that part of this directive order which continues in effect the terms and conditions of a prior contract which has expired or has been otherwise terminated shall not be suspended or stayed by the filing of a petition for review but shall be effective according to its terms unless and until the Board, upon consideration of a petition for review otherwise directs.

Signed by John D. Larkin and Philip Marshall, public members; Charles B. Magrath and G. E. Moredock, Jr., employer members; and Samuel C. Evett and Paul A. Givens, labor members, dissenting.

Directive Order of Regional Board VI

Sept. 29, 1944

The Regional War Labor Board for the Sixth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives and regulations issued under the Act of Congress of Oct. 3, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties, denies the union's request for sick leave and severance pay, and orders that:

1. Union Security

"(A) All employees, who, 15 days after the date of the directive order, are members of the Union in good standing in accordance with its constitution and by-laws and all employees who become members after that date shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the Regional War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"The Company, for said employees, shall, for the duration of the contract between the parties, deduct from their first pay of each month the union dues for the preceding month and promptly remit same to the appropriate officer of the Union. The initiation fee of the Union shall be deducted by the Company and remitted to the appropriate officer of the Union in the same manner as dues collections.

"(B) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by

the Regional War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"(C) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties, or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the Regional War Labor Board on due application. The decision of the arbitrator shall be final and binding upon the parties."

2. Vacations

"Employees with one or more but less than five (5) years of service shall receive one week's vacation with pay computed at the rate of three (3%) per cent of their average straight-time hourly earnings during the year preceding the vacation period. Employees with five or more years of service shall receive two weeks' vacation with pay computed at the rate of four (4%) per cent of their average straight-time hourly earnings during the year preceding the vacation period."

3. Arbitration of Grievances

The parties' agreement concerning arbitration of grievances shall be supplemented by the following provisions:

"Basic hourly scales shall be established on all jobs in advance of the determination of piece rates. Such basic hourly scales on new jobs, modified processes or conversions from time to piece rate system of payment, shall ultimately be subject to arbitration if not settled by agreement. Piece rates shall be established subject to joint union-management time study in accordance with Art. VIII, Sec. 7, of the contract.

"Renewal or revision of the contract is reserved to collective bargaining and not subject to arbitration unless later mutually agreed upon."

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the Order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 15 days from the date hereof provided that the 15-day period referred to in Par. 1 above shall be deemed to run from the date of this order unless in the meantime a petition for review is filed with the National War Labor Board through the Sixth Regional Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board through the Sixth Regional Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

Signed by Philip Marshall and Dale Yoder, public members; J. B. Beardslee and W. H. Hartz, employer members, subject to dissent with opinion, on vacations, maintenance of membership, check-off, and arbitration; and Samuel C. Evett and Rudolph Faupl, labor members, subject to dissent with respect to denial of sick leave and severance pay.

Dissenting Opinion of Employer Members of Regional Board VI

VACATION PLAN

BEARDSLEE and HARTZ, Employer Members:—Industry dissents on the vacation plan in this order for the following reasons:

It was clearly shown at the hearing before the tripartite panel of the Board and was so admitted by public Board members that the three per cent bonus which was paid in the past few years in lieu of vacations, and at the Regional panel hearing, the union representative admitted the members were aware of the company's position on that point. This leaves only the amount of the vacation to be decided.

For several years, at this plant and other plants of this company, the men have received three per cent in lieu of vacations.

Recently, in some plants the union has decided that they prefer the customary one-for-one and two-for-five,

which has been acceptable to the company since the three per cent bonus was to be eliminated where this was put into effect. In fact, another union in this same plant recently agreed to this change.

Either the one for one and two for five or the three per cent is acceptable to the company—but not both.

The order that the company must continue with three per cent and pay four per cent to the older employees is unreasonable, and further, it jeopardizes the relation between the men and the management, not only in this plant but in other plants, of this company in this area.

Report and Recommendations of the Panel *

July 7, 1944

PARTIES TO THE DISPUTE

Company

The American Brake Shoe Company is a Delaware corporation, with central offices in New York City, engaged in the manufacture of various types of castings and forgings in numerous plants throughout the United States. The current case involves only the Great Lakes plant of the American Forge division. The American Forge division is not a separate subsidiary corporation but is an administrative unit which supervises the operation of the Great Lakes plant located in Chicago at 119th Street and Racine Avenue and the American Forge plant in southwest Chicago. The latter plant specializes in upset rather than drop forgings and is therefore referred to as the Upset plant. These two plants have the same direct management but with separate supervisory staffs (hearings, pp. 28-29). The Upset plant was acquired by the American Brake Shoe Company some years before its acquisition of the Great Lakes plant. The Great Lakes plant was purchased by the American Brake Shoe Company in March 1940. It employs at present just under 600 workers 413 of whom are in the bargaining unit. It is engaged in making forgings for combat units and is now operating 100 per cent on war production.

Union

The union involved is Local No. 164 of the United Farm Equipment and Metal Workers of America (CIO). This local union is the product of an organization campaign which began in March 1943. By consent election held under the National Labor Relations Board, Sept. 21, 1943, the union established its position as bargaining agent with a vote of 221 as against 137 (union brief, p. 2 and management brief, pp. 1 & 2).

BACKGROUND

Certification

In October 1943, the month following the NLRB certification of the bargaining unit, negotiations for a collective bargaining contract were initiated. These negotiations resulted in the first signed contract (Jan. 29, 1944) between the union and the management of the Great Lakes plant, and this contract is now in effect. However, the parties failed to agree on a series of seven issues. These seven issues were, however, incorporated in the agreement under the subtitle of, "Remaining Unresolved Issues" with the statement, "It is the intention of the union to exercise the regular procedure as set forth in Executive Order No. 9017 [1 War Lab. Rep. XVII; WCDS 32] signed Jan. 12, 1942, in placing the remaining issues hereinstated before the National War Labor Board for its consideration." The agreement also provided for the joint submission of a Form 10 application to the Chicago Regional War Labor Board for certain adjustments in the wage structure. This Form 10 petition has already been processed and acted upon by the Board under a directive order issued May 5, 1944 (Case No. 6-30625). After the usual consideration of disputes cases by the conciliation division, the unresolved issues were certified to this Board on Feb. 12, 1944.

THE ISSUES

The issues as certified were:

I. Request for 17-cent per hour general increase in all wage rates;

II. Request for severance pay and request for sick leave with pay;

III. Request for paid vacation in addition to existing bonus plan;

IV. Request for increase in the night-shift differential;

V. Request for union closed-shop and check-off; and

VI. Request for an all inclusive arbitration clause.

The request for an increase in the night-shift premium (Item 4 above) was withdrawn by the union in its

* Ed. Note: Only that portion of the panel report relating to Issue III, request for paid vacation in addition to existing bonus plan, is reproduced.

brief filed under date of Mar. 20, 1944 (union brief, p. 7). The withdrawal was accepted by management counsel at the hearing (hearings, p. 215). During the course of the hearing the parties agreed to a clause which would defer consideration of the request for a 17-cent hourly wage increase until a later date. Union representatives proposed a similar treatment of the questions of severance pay and sick leave, but management counsel objected to this procedure. The parties did agree, however, to allow the panel recommendations on these two questions to be based on their briefs so that no discussion of these questions took place at the hearing.

Shortly after assignment of the case to this panel, hearings were held for two days, May 11 and 12, at the Hotel LaSalle in Chicago. Management counsel arranged for a stenographic transcript of the hearings by the Frank H. Morgan Reporting Agency, 155 North Clark Street, Chicago. A copy of the transcript which is transmitted with the file on the case was received by the panel chairman on May 23. The panel met for a conference on May 31, at the Hotel LaSalle, the earliest possible date after the receipt of the transcript. Drafts of various sections of this report were sent to the panel members for their consideration during the following week, and a tentative draft of the entire series of recommendations was submitted to the panel on June 12. The final character of the recommendations was agreed upon in a conference of the panel at the Hamilton Hotel (Chicago) at that date.

[ED. NOTE: Issues I and II, discussed in the panel report at this point, are omitted.]

III. Vacation Bonus

Union's Position

The union requests that a systematic plan for paid vacations be added to the existing situation in which the employees receive in two semi-annual payments a bonus equal to 3 per cent of straight-time earnings, which is claimed by management to be "in lieu of vacations with pay." Specifically the request is for one week of paid vacation to employees of one year standing and two weeks for employees with five or more years of service. In support of this position the union has argued that:

(a) The employees consider the bonus as a part of the existing wage structure (hearings, p. 86).

(b) The 3 per cent bonus payment gives no recognition to the principle of seniority which it is alleged is customarily considered in setting up systematic paid vacation plans (hearings, p. 66);

(c) The bonus is in fact an incentive plan designed to reduce absenteeism in the case of hourly rated employees and also in the case of piecerate employees designed as an extra incentive to maximize production (hearings, p. 86);

(d) Plants in the neighboring vicinity who pay bonuses to their employees also provide for vacations with pay (hearings, p. 87); and

(e) If the bonus were taken away and some other form of paid vacation substituted, it would not remove the right of the union to petition for a restoration of the 3 per cent bonus under stabilization policies of the War Labor Board (hearings, pp. 73, 74).

Company's Position

The company does not object to a system of paid vacations. It insists, however, that the present bonus was instituted and has been continuously maintained by the management "in lieu of vacations with pay." The management contends, therefore, that, if a system of vacations with pay is to be introduced, the abandonment of the 3 per cent bonus should be regarded as a proper offset (hearings, pp. 58-63).

Discussion

At the outset it may be well to review the historical developments in the operation of the 3 per cent bonus plan. The 3 per cent plan is not peculiar to the Great Lakes plant. Some years ago, certainly as early as 1935, the 3 per cent bonus plan was introduced in other plants controlled by the American Brake Shoe Co.

The plan is simple and involves a payment in December and another payment in July of a sum equal to 3 per cent of the straight-time earnings of the particular employee during the preceding six months. The company has sometimes closed down some plants for a day or two around the Fourth of July and at Christmas time. By this means it has afforded a long weekend of free time to its employees twice a year. The procedure followed in July 1941 attested to by Exh. 3 of the management brief appears not to have been unusual. That

year July 4 fell on Friday. By working on Sun., June 29, the company found it practicable to close down on Fri., July 4, and did not reopen operations until Tues., July 8.

The 3 per cent bonus plan was announced at the Great Lakes plant in March 1940, shortly after the American Brake Shoe Company acquired control of this plant. It had previously been in effect for some years in the sister plant of the American Forge division, which has already been referred to as the Upset plant. When the company introduced the plan at the Great Lakes plant, it made its first payment in July 1940 on all of the earnings of the employees for the preceding six months even though the plant had been under control of this company only since March.

It appears to have been the practice of the company to announce each of the semi-annual bonus payments by a notice to its employees on the plant bulletin board. A copy of the June 16, 1941, announcement is furnished with the company brief as Exh. 3. This announcement appears to be typical of the entire series although the panel has not seen any other copies. The first sentence of the announcement reads, "In lieu of vacations with pay, the American Forge division will give to its employees a vacation pay of 3 per cent on wages earned from Jan. 1 to and including June 21." By virtue of these notices, which seem to have appeared regularly, the company has made its position known that it considered this bonus payment as "in lieu of vacations with pay."

While probably not all of the employees have been aware of this position, the union accepts the fact that many of the workers have known of the company's stand on the matter (see hearings, p. 118). When new employees were hired, the company seems to have had no practice of systematically explaining either the bonus or the company policy on vacations unless the new employees specifically inquired about the matter (see hearings, pp. 45-46). There is some evidence, however, that the workers have not accepted the claim that the bonus payment was a real substitute for vacations with pay (see hearings, pp. 114-116). Moreover whatever acceptance there may have been of the company's position appears to have been an individual matter. The union in its bargaining, except for one possible circumstance that will be mentioned later, appears never to have agreed to a consideration of the bonus as being a substitute for vacations with pay.

In 1942, before the wage stabilization program was inaugurated, the Upset plant of the American Forge division was organized by a different CIO union, under the first collective bargaining contract at that plant, and a paid vacation system was introduced providing for one week of paid vacation to employees with one year of service and two weeks' vacation to employees of five years' standing. Vacation pay was on the basis of 40-80 hours of straight-time earnings. However, at this time the bargaining contract made provision for a flat 5½-cent increase in the hourly wage rates. The three per cent bonus payment was abandoned, but no specific mention of its abandonment appears to have been included in the collective bargaining contract. The Upset contract was not furnished to the panel, but the management counsel states that the contract itself contains no provision, indicating that the vacation plan was to replace the old three per cent bonus system (see hearings, p. 34). It is the management's contention, however, that the new vacation plan replaced the old bonus system at the Upset plant and that the general wage increase provided for at that time was not to compensate for the abandonment of the three per cent bonus plan (see hearings, p. 40). The making of this collective bargaining contract occurred in July about the time when the semi-annual bonus payment would have been made. The discontinuance of the three per cent plan appears to have been announced simply by a notice on the bulletin board (see hearings, p. 34).

Although the management insists that the flat hourly wage increase introduced with this contract was entirely independent of the abandonment of the bonus system, it is difficult to believe that no employees would have been left with the impression that the 5½-cent wage increase represented in some part an incorporation of the old bonus payment into the wage structure. The panel has not examined the wage structure at the Upset plant, but it seems quite likely from an examination of the wage rates now in effect at the Great Lakes plant located in the same city that the 5½-

cent hourly wage increase would have represented something more than 3 per cent of the earnings in effect in 1942.

The management has admitted that two large metal working plants located in close proximity to the Great Lakes plant (International Harvester Pullman Works and Ingersoll Steel) do observe a system of paid vacations (each on one week-one year, two weeks-five years basis) in addition to the payment of production bonuses. The bonus systems in effect in these two plants are not identical with the existing plan in the Great Lakes plant but are similar enough so that the employees of the Great Lakes plant might consider themselves at a comparative disadvantage with the employees at these two neighboring plants.

At the hearing, the personnel manager at the Great Lakes plant suggested, without benefit of records, that it was his impression that wage rates at the Great Lakes plant (exclusive of the three per cent bonus payment) "have always been 10 per cent to 15 per cent higher than anyone's in the district" (see hearings, pp. 81, 94). This comparison was questioned by a union representative, (see hearings, p. 95). But there is still more effective evidence on the reliability of this comparison in the joint submission of the Form 10 in which management has requested the Board to approve substantial increases in the old rate structure. This proposed rate structure, which was made with benefit of records, is attached to the collective bargaining contract and indicates that the company did not consider then that its rates were substantially above those of neighboring plants. This Board, however, after review of Form 10, considered that there was an inadequate showing of significant inter-plant inequity. However, subsequent to the Board's partial denial order of May 5, the parties have submitted a joint petition for reconsideration in which they list the rates on a series of categories of day-rate workers and compare them with rates in effect for similar categories in the International Harvester Pullman plant. This comparison claims that for some nine occupational classes, at least, rates at the Great Lakes plant are definitely lower than those at the International Harvester Pullman plant. This panel, of course, does not presume to pass upon the merits of this claim. It simply cites the claim to indicate that the company estopped from pleading effectively that the absence of a paid vacation plan at this plant is offset by the existence of wage differentials.

We have, therefore, a situation in which the case for a paid vacation plan seems to boil down to these three points:

(1) In spite of continuous management insistence that the bonus plan was "in lieu of paid vacations," this position was never agreed to by the union. Management seeks to convert an admittedly consistent assertion on its part into an element of a collective bargaining agreement by Board order. In a somewhat similar situation (American Fork and Hoe Co.13 War Lab. Rep. 351), the Board approved a panel recommendation for a vacation plan.

(2) The conversion of a similar bonus plan at a sister plant of the company, made through voluntary collective bargaining without any influence from the War Labor Board and in advance of the stabilization program, lends itself to the interpretation that in that case paid vacations were introduced in addition to what the employees might have considered a compensation for discontinuance of the old bonus plan in the form of a wage increase.

(3) At lease two large metal working plants in the same vicinity have paid vacation plans in addition to some form of bonus. It is doubtful whether the wage structure at the Great Lakes plant is such as to offset this advantage.

There is, however, one weakness in the case for paid vacations which should be observed. The union did subscribe jointly to the submission of the Form 10. The Form 10 as submitted clearly subordinated the three per cent bonus payment and did not significantly incorporate this payment as a part of the old wage structure (also see hearings, p. 47). In so doing it would seem that the union is in a position where it wishes to consider the three per cent bonus plan as not being a part of the wage structure under circumstances where it is to its advantage to do so and insists that it is a part of the wage structure under other circumstances. The panel does not think that the Board should encourage such action, and had the Board found it advisable to act favorably on the original submission of

Form 10, our recommendation might have been different from what it is in this case. In view of the fact that the original Form 10 request was denied, however, we do not feel that the union members should be penalized too heavily for what may have been an oversight on the part of a union official. Even if this had been a deliberate mistake, the union members have acquired no benefit from it.

Recommendation

Under these circumstances, considering all of the facts in the case, the panel feels compelled to recommend to the Board that it approve a plan providing for the immediate institution of paid vacations of one week's duration for employees of one year's standing and two weeks to employees of five years' standing or more, in addition to the existing bonus system. Vacation pay should be on a 40-80 hour basis on straight-time earnings for the six months preceding the vacation time. In view of the fact that the summer season had already begun, the company should be allowed substantial latitude in extending the vacation schedule into the fall months. The manner of timing vacations should be entirely at the discretion of management.

Although it has no direct bearing on this case, testimony at the hearing indicated that there is already some dissatisfaction with the one- and two-weeks' vacation plan now in effect at the Upset plant (hearings, p. 32). There is, therefore, a possibility that, should the Board decide to accept the recommendation of the panel, this case might be regarded as a precedent for the restoration of the three per cent bonus system at the Upset plant while maintaining the existing one- and two-weeks' vacation plan there. To avoid possible confusion on this point, we want the record to contain a definite recognition that our recommendation in this case assumes that it is possible to treat the original wage increase granted at Upset as compensation for the cancellation of the three per cent plan. Our recommendation, therefore, ought not to be used as a precedent to establish the possible restoration of the three per cent bonus plan at that plant while retaining the paid vacation plan there.

[ED. NOTE: Issues 4 through 6, discussed in the panel report at this point, are omitted.]

Signed by C. L. Christenson, representing the public; Edward C. Kos Koba, representing employers, subject to dissent on maintenance of membership, with opinion; and Robert Herbin, representing labor, subject to dissent on check-off.

McGOLDRICK LUMBER CO.—

Decision of West Coast Lumber Commission

In re McGOLDRICK LUMBER COMPANY [Spokane, Wash.] *and* INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 10-100 (CIO). Case No. 111-14315-JB, July 13, 1945.

WAGES—JOB RATES—Temporary transfers—Convenience of employees

Lumber pilers assigned to lower-rated jobs should receive rate of pay for such lower-rated jobs when assignment is made for convenience of employees. Order is within intent of parties' contract, which provides that company may, with their consent, transfer employees to lower-rated job in lieu of lay-off and pay them at rate of position to which transfer is made.

For other rulings see Index-Digest 275.500 in this or other volumes.

Majority decision of West Coast Lumber Commission. Opinion by W. F. Lubersky, public member. Public member concurring: John D. Galey. Employer members concurring: Jack E. Bates and E. H. Card. Labor member dissenting with opinion: Stanley Earl.

Directive Order

The West Coast Lumber Commission, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of

Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby orders as follows:

1. The rate of pay for lumber pilers, when assigned temporarily to lower-paid jobs, when the assignment is for the convenience of the employee, shall be the rate of pay for the job classification to which the employee is assigned.

2. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 15 days from the date of mailing hereof to the parties unless in the meantime a petition for review is filed with the National War Labor Board or unless the National War Labor Board within such period reviews this order on its own motion, in either of which events, this order shall be suspended unless and until the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree. In the event a petition is filed with the National War Labor Board asking a review of only a part of this order, any party may petition the National War Labor Board asking a review of only a part of this order, and any party may petition the Commission to make the rest of the order immediately effective according to its terms. Except as otherwise provided elsewhere in this order, the parties may in any case mutually agree upon the date when this order or any part thereof shall take effect.

Opinion of the Commission

June 22, 1945

LUBERSKY, Public Member:—The parties to this case are in dispute over the question of the proper rate of pay for employees performing work other than that of their normal job. The particular dispute centers around the lumber pilers who work on an incentive or piece rate basis. The lumber pilers average about $1.40 per hour. The parties now have a contract provision to the effect that:

"If an employee is temporarily assigned to a position paying a lower wage than he has been receiving, no reduction in wage shall be made, *but* if an employee's services are no longer required in his class of work, the employer may, with the employee's consent, instead of laying off, transfer him to another position vacant, and fix the wage according to the position. If the former position is renewed, the man shall automatically return to his former position." (Italics supplied)

The parties also have a tentative understanding that the term "temporary" used in this sense would mean no more than 15 days. The company, however, contends that this does not apply to piece rate work but that, instead, a piece rate worker should receive whatever rate of pay pertains to the particular job to which he is temporarily assigned.

The particular problem appears to have arisen due to the fact that rather frequently the stock of lumber to be piled runs out, and it is necessary then to either send the employees home or put them on other work. The union has contended that when the lumber pilers are put on other work for any period of 15 days or less they should be entitled to their lumber piler's average earning rate of $1.40. The company has contended that when put on other work they should receive the prescribed rate of pay for that particular type of work.

It is the opinion of the majority of the Commission that this question is determined by the contract between the parties and, more specifically, the clause quoted hereinabove. That clause makes provision for two types of situation: (1) Where an employee is temporarily assigned to a position paying a lower wage than his regular position pays, (2) where an employee's services are no longer required in his class of work. Under the first situation the employer is required to pay the employee his regular wage rate. Under the second situation the employer may, if the employee is willing, transfer him to another position rather than lay him off and fix the wage according to the position. The contract further provides that when the former position is renewed the man is to be automatically returned to his former position. This contractual provision presupposes two specific alternatives. It must be assumed that the word "but" was used with intent. The one type of situation envisions a case wherein a man is taken off his job even though that job is continued. The alternative situation is that case in which the employee's services are no longer required in his usual job.

We think that the case at bar falls squarely with the intent of the con-

tract under the second alternative. In other words, here are lumber pilers whose services are no longer required because there is no lumber to be piled. Under those circumstances, the employer is contractually entitled to transfer the lumber piler, with his consent, into a vacant position "and fix the wage according to the position" or else lay the man off.

The Commission was not called upon to determine whether this is or is not an equitable arrangement. The parties have a contract. It is their contract which they entered into, presumably willingly and in good faith. The Commission considers the intent of the contract on this issue to be clear and unequivocal and thus comes to the conclusion the parties are required to obey and live up to that intent.

Dissenting Opinion of Labor Member

EARL, Labor Member:—Labor member of the Commission dissents from the majority opinion in this case for the following reasons:

1. Lumber pilers are part of the bargaining unit and are covered under Art. 7 of the agreement which provides for a regular rate of pay when assigned to a lower paid job.

2. This practice is followed with all employees except lumber pilers.

3. The company and the union negotiated a definition for temporary work which is 15 days.

Since this is true it should apply to the lumber pilers as well as the other employees of the company.

4. No provision is in the agreement for exclusion of lumber pilers from contractual provisions.

Report and Recommendations of Reviewing Officer

May 28, 1945

PRELIMINARY RECITAL

The parties stipulated to have their case presented on joint briefs with the understanding that copies of the report and recommendation of the reviewing officer shall be submitted to the parties for comment before being presented to the Commission for final disposition and decision. They stipulate that the directive order shall be limited to the issue.

BACKGROUND

The present working agreement was signed in December of 1941. The provisions of the union contract applicable in this issue were in the contract as it was accepted by the parties at that time and continues in effect to date.

Timber Products Manufacturers represents the McGoldrick Lumber Company as labor relations representative. A dispute arose at the McGoldrick Operation from an alleged "reduction in hourly wages." At a meeting held on Jan. 15, 1945, at the plant, a tentative understanding was reached that employees assigned to a lower rated position would be paid their accustomed rate of pay for a temporary period. This temporary period was established as fifteen (15) days. The union was not entirely satisfied with the fifteen (15) day temporary period proposal. At a meeting held on Jan. 16, or 17, 1945, the fifteen (15) day temporary standard was again proposed by the employer, and the union desired to know if it was the consensus of the parties that the fifteen (15) day temporary standard was to apply to piecework employees or was to be limited to hourly paid employees. The company took the position that it applied only to the hourly rate employees. The union contended that it should apply to piece rate work and specified it should include the lumber pilers.

This original discussion arose over the rates of pay for the trim-saw operator and the rip-saw operator, hour rate employees. Inasmuch as the union was insistent that the lumber pilers be included in this proposal and the company was unwilling to have them included, this dispute was referred to the Conciliation Service and was certified to the West Coast Lumber Commission on Feb. 28, 1945.

ISSUE

Transferred Lumber Pilers

The rate of pay which shall apply to the lumber pilers temporarily assigned to lower paid jobs at the convenience of the employees.

Union's Position

The union claims that there is nothing in the contract which restricts the parties from making the application of the fifteen (15) day temporary standard to the lumber pilers and the payment of their established wage

rate while assigned to a lower paid position. They also point out that the lumber pilers are included in the bargaining agreement. They contend that it is the practice of the industry to pay piece rate employees their established rate of pay while assigned to positions paying a lower rate. They take the position that these lumber pilers have been patriotic and loyal to their country and to the company by remaining in their positions rather than going into other industries where they might have received a higher rate of pay and an assurance of continued availability of employment throughout the shift. They contend that the company has violated the contract and that their discussions on this subject in the meeting in January 1945 were not in good faith.

Company's Position

The company contends that the contract does not require that piece rate employees when assigned to positions of lower pay for their own convenience receive their established rate of pay for a fifteen (15) day temporary period. The company takes the position that, if the employer requires the assignment that they will, according to their former practice, pay the employee at his established rate of pay rather than at the lower rate of the position to which he is assigned, but when he is assigned to the lower paying position for his own convenience rather than electing to go home for the balance of the shift that he will be required to accept the lower rate of pay of the position to which he is assigned.

There has been no difficulty in the application of those principles during the entire terms of the contract until this dispute arose over the lumber pilers. They submitted information which indicates that it is not the practice in the industry to pay employees higher established rates of pay when assigned to lower paid positions. (See p. 4 of Employer's Brief)

Discussion

The lumber pilers on their piece rate standard were receiving an average of approximately $1.40 per hour. If they were assigned to other work in the yard and are required to accept the lower rate of pay, their earnings would be $.825 per hour, the common labor rate. The volume of lumber sawed is not sufficient to keep the lumber pilers continuously employed at piling lumber. When their services have been required in other departments, they have been assigned by the company to other work and when so assigned for the convenience of the company, have received a rate of pay equal to that earned while piling lumber. However, when the lumber pilers requested that they be given assignments, to continue working the balance of the shift after there was no longer lumber to be piled, the company proposed to pay those lumber pilers the common labor rate.

Art. VII of the contract provides:

"If an employee is temporarily assigned to a position paying a lower wage than he has been receiving, no reduction in wage shall be made, but if an employee's services are no longer required in his class of work, the employer may, with the employee's consent, instead of laying off, transfer him to another position vacant and fix the wage according to the position. If the former position is renewed, the man shall be automatically returned to his former position."

There is no standard for "temporary" provided in the contract. The meeting between the company and the union in January decided that fifteen (15) days should be established as the temporary period standard but failed to definitely settle this standard in its application to the piecework employees.

The language of Art. VII does not specifically indicate its applicability to piecework employees. Ordinarily in construing contracts, it is customary to restrict application to those situations specified unless there may be found elsewhere in the contract evidences of intent to extend its application to matters not specifically mentioned. The entire contract is not before us and the portion of the contract quoted in the brief limits its application by reason of the fact that no specific mention is made of piecework employees.

The language of Art. VII also differentiates between: (1) Assignments of employee to lower paying positions for the convenience of the company, in which cases, there is no dispute and (2) those assignments of employees to lower paying positions for the convenience of the employee. The assignment of the lumber pilers in these situations under consideration are for the convenience of the employee. Assignment is made "with the employee's consent." Art. VII provides that "the

employer may * * * instead of laying off, transfer him to another position vacant and fix the wage according to the position." The assignment of the lumber pilers to other positions in the plant for the convenience of the employee, according to these clauses of the contract, require that the rate be fixed at the rate of the position rather than at the rate established for lumber pilers.

In so far as evidence has been submitted relative to the practice of the industry and of employer party in this case, we would have to conclude that the lumber pilers in this case have been assigned to the lower paying positions for their own convenience and would be required in accordance with the practices in the past to have their rate of pay established or fixed at the wage rate of the position to which they are assigned. Conversely, had the assignment been at the convenience and for the benefit of the employer in accordance with the established practice, the rate of pay for performing the work for the lower paid position would be fixed at the employee's customary and established rate of pay for his original position.

Recommendation

It is recommended that the rate of pay for lumber pilers when assigned temporarily to lower paid jobs, when the assignment is for the convenience of the employee, should be fixed according to the rate of pay for the position to which the employee has been assigned.

Signed by Perry D. Whittle, reviewing officer for the Board.

AIRTHERM MFG. CO.—

Decision of Regional Board VII (Kansas City)

In re AIRTHERM MANUFACTURING COMPANY [St. Louis, Mo.] *and* UNITED STEELWORKERS OF AMERICA, LOCAL 2795 (CIO). Case No. 111-14180-D, July 23, 1945.

CHECK-OFF—15-day escape period

Union whose existing contract provides for maintenance of membership without escape clause and for voluntary check-off is awarded nonrevocable check-off provision to apply to all employees who do not, within 15 days of date of Board's order, notify company that they do not wish to submit to check-off arrangement. Escape period is provided on theory that employees must have free opportunity to escape from union-security clauses included in contracts by Board order.

For other rulings see Index-Digest 20.325 in this or other volumes.

Majority decision of Regional Board VII (Kansas City). Opinion by Jack G. Day, chairman. Public member concurring: Leo C. Brown. Employer members concurring: Henry B. Neef and Samuel W. Greenland. Labor members dissenting with opinion on Pars. 1 (a), (b), and 3: Mack A. Fitzgerald and Harold J. Gibbons.

Directive Order

The Regional War Labor Board for the Seventh Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Wages

The union's request for a wage increase is denied, except that the following adjustments shall be made in the present incentive plan:

(a) Base Rate for Incentive System

The base rate for the incentive plan of wage payment shall be the top rate of the present progression plan for each labor grade.

(b) Guaranteed Rates

The guaranteed hourly rates shall be the hourly rates provided for in the present progression plan.

Note: The adjustments so ordered are made on the basis of existing brackets and upon the desirability of establishment of a single base rate for the incentive system.

2. Retroactivity

The wage adjustments ordered in Par. No. 1 above shall be retroactive to

Jan. 1, 1945, anniversary date of the contract.

The procedure to be followed in making the retroactive payment to those employees who have either quit or been discharged shall be in accordance with the National War Labor Board's Resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

3. Check-Off

The agreement between the parties shall contain the following provision for a check-off.

All employees who have not voluntarily authorized deducting of dues shall have their dues deducted by the company, according to the plan set out below unless they notify the company on or before Aug. 7, 1945, that they do not desire to submit to such an arrangement.

The company, for said employees, shall deduct from the first pay of each month the union dues for the previous month and promptly remit the same to the duly designated officer of the union. The initiation fee of the union, if any, shall be deducted by the company and remitted to the duly designated officer of the union in the same manner as dues collected.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board, and unless otherwise directed by the National War Labor Board, shall take effect fourteen (14) days from the date hereof, unless, in the meantime, a petition for review by the National War Labor Board is filed with the Seventh Regional War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect. In the event a petition for review by the National War Labor Board is filed, wherein review of portions of this order is requested, either party may request the National War Labor Board to make the remaining portions of the order immediately effective, subject to the following provision:

As required by Executive Orders No. 9250 and 9328, as supplemented by the directive of May 12, 1943, paragraphs of this order dealing with wage increases shall in any event become effective only upon determination by the Office of Price Administration that the wage increases ordered in those paragraphs will not require any change in price ceilings or, if no such determination is made, then upon approval by the Director of Economic Stabilization. The parties will be promptly notified of such action.

As provided in Sec. 802.40 of the "Rules of Organization and Procedure of the National War Labor Board," this order is subject to review by the National War Labor Board at any time on its own motion.

Opinion of the Board

CHECK-OFF

DAY, Chairman: — Whether the check-off embraced in the union request is automatic or voluntary is not entirely clear, but from the whole record it appears that the union objective is an automatic check-off to accompany a negotiated maintenance of membership without an escape period.

The majority, labor dissenting, orders that all employees who have not voluntarily authorized the deduction of dues shall have their dues deducted from their wages unless notice to the contrary is given on or before a specified date.

The ordered clause follows the theory that employees must have a free opportunity to escape from directed union security, at least when it takes the form of union maintenance or check-off. However, it might have been properly argued that the check-off is merely an administrative device implementing the enforcement of the contractual obligations of the employees and therefore not subject to an escape period had it not been for the recent decision of the National War Labor Board in the Mexico Refractories case.*

In that case a maintenance of membership and voluntary check-off were part of an existing contract. The union claimed that upon contract

* Case No. 111-11633-D [25 War Lab. Rep. 423], May 29, 1945. (This case arose initially in Region VII.)

termination the company unilaterally provided an escape period. After the negotiations on the new contract, the issues unresolved included automatic check-off and the question of an escape period in the union maintenance clause. The Regional Board adopted the union position that no escape period was warranted since the company had previously provided one. In addition, automatic check-off was directed.

On appeal the National War Labor Board denied review of the Regional directive with the exception of the check-off provision which was modified to provide:

"All employees who have not voluntarily authorized deduction of dues shall have their dues deducted by the Company as ordered by the Regional Board unless they notify the Company on or before June 29, 1945, that they do not desire to have their dues so deducted."

Thus, the National War Labor Board held that the employees who had a previous opportunity to withdraw from the union where the check-off was not in issue must be allowed an occasion to avoid the ordered check-off.

Concisely stated, the question in the Mexico Refractories case was whether a check-off provision ordered after the employees' status as union members had been fixed should be accompanied by an escape period. The National War Labor Board's affirmative answer to that question precludes the possibility of any other answer in a case where, as here, the only factual distinction lies in the employees' union membership status having been fixed by negotiation. The alignment of fact is nearly exact and the principle of the Mexico Refractories case requires an order establishing an escape period * or the check-off.

The union request is denied.

WAGES

A voluntary wage application † filed by these parties fixed a progression plan which provided automatic advancement to the top of the range. Progression steps within the range form both the base rate and the guaranteed rate under the incentive system. The application was approved retroactive to Feb. 11, 1944.‡ The union now requests single rates considerably above the top of the range. However, there is no possible basis for approval unless it be a bracket comparison and the approval of the voluntary application by this Board purported to exhaust the applicable brackets. To grant an additional increase would require the Regional Board to reverse in a dispute case a conclusion reached in deciding a voluntary application without new evidence or a demonstration of misapplied policy.

The progression for the guaranteed rate is not distributed but the obvious inequity in multiple incentive base rates for employees in the same classification is corrected by ordering the top of the progression as the base rate. The top rate is chosen because the progression schedule in existence applies to the base as well as the guaranteed rates and would in any event ultimately install the range top as the base rate for all employees Moreover, the length of time the progression plan has been in effect supports the probability that a substantial proportion of the employees on the incentive system already are based on the maximum.

Dissenting Opinion of Labor Members

CHECK-OFF

GIBBONS and FITZGERALD, Labor Members:—Although the labor members agree with the Board's action in directing a check-off provision in the contract between the parties, we vigorously dissent from the 15-day escape clause gratuitously added by the Board majority despite the fact that it was at no time an issue of the case and that it could serve to work an unfair hardship on the union. It is our understanding from the arguments presented during the Board's consideration of the case, that the majority's action was prompted by a belief that the Natonal Board's action in the Mexico Refractories Case, Case No. 111-11633-D, set a policy in cases of the type of the instant case. We are convinced that this is a completely mistaken belief and is due to a misunderstanding of the facts in the Mexico Refractories case and of the reasons for the National Board's deci-

* The "escape period" applies only to the check-off and does not reopen the employees' status as union mmbers.

† Airtherm Mfg. Co., Docket No. 7-16,550, Oct. 19, 1944. (Date of Board action.)

‡ The plan provided for three-cent progression at six, five, and four-month intervals, depending on the labor grades.

sion to include a 15-day escape clause in the check-off provision.

In this case the issue of maintenance of membership, or of any escape clause relating to it, was not in dispute but had been agreed upon by the parties and incorporated in their new agreement. In the Mexico Refractories case, the maintenance of membership and 15-day escape clause issue was the chief factor in dispute between the parties. In the latter case the Regional Board found that an escape period for the new contract had already been put into effect and, therefore, the Board refused to order an additional escape period. This issue was appealed by the company to the National Board, and, because of the fact that there was such disagreement over the maintenance-of-membership clause, the National Board denied the company's appeal of the maintenance-of-membership order of the Regional Board, as well as the Regional Board's denial of an additional escape period, but the National Board did grant an escape period for the check-off provision.

In the instant case the only issue in dispute was that of instituting an automatic irrevocable check-off in the contract. The company, in opposing the check-off, did not do so because it felt that the employees should decide for themselves whether or not they wanted to pay their dues or whether or not they wanted their dues checked-off, but [rather] because of the bookkeeping difficulties involved. The company at no time raised the question of an additional escape clause in case the Board were to grant a check-off provision. It is these specific facts which, in the consideration of the labor members, make the application of the National Board's decision in the Mexico Refractories case an error.

As to the general principle of an escape clause being attached to a check-off provision, the labor members are especially opposed. This type of action is an incentive to many employers to whip up opposition to the union and it can, therefore, be used for anti-union purposes. Since the whole question of escape from membership or any other union obligations was not raised by either party in this case, the action of the Regional Board does in fact create a serious element of friction where one previously did not exist. The labor members, therefore, feel that the Board should have granted the standard Little Steel check-off provision which is automatic and irrevocable.

WAGES

By ignoring the recommendation of the panel majority, the Regional Board has denied wage increases in this case which were clearly justifiable in the light of the facts as brought out by the panel majority. The panel majority recommended that Wage Bracket Determination No. 15-A of the Regional Board, covering the metal and machine industry, should be applied in deciding what rates should be paid in this plant. A comparison of these brackets to the rates now being paid indicates that a general increase of between 5 cents and 10 cents an hour is allowable. Since the panel actually investigated all the facts in the case and heard the arguments of both parties, it seems to the labor members that their recommendation should have been accepted by the Board. There seems to be no justifiable basis for the action of the Board majority in denying the increase. The labor members, therefore, cannot concur in the action of the Board majority.

Report and Recommendations of the Panel *

Apr. 30, 1945

BACKGROUND OF THE CASE

1. The Airtherm Manufacturing Co. is engaged in the production of unit heaters and the fabricating and assembling of metal parts. It has about 75 per cent Government contracts.

2. These are approximately 33 men and 7 women, a total of 40 employees involved in the issues presented.

3. The company has a total of about 60 employees.

4. The present contract under which the parties operate was executed on Feb. 11, 1944, and by its terms expired on Jan. 1, 1945. It is the first contractual relationship between the parties.

5. The history of the case is adequately summarized in the union brief as well as in the company brief and need not be repeated at this time.

6. The Dept. of Labor certified this case to the NWLB on Feb. 21, 1945. The parties have agreed to continue under the terms of the old contract until a new one is negotiated. All

* Ed. Note: Only that portion of the panel report relating to Issue 2, check-off, is reproduced.

phases of the new contract have been agreed upon with the exception of the two issues herein presented.

7. The union was certified by the NWLB as the exclusive bargaining agent herein on Sept. 9, 1942. There have been no strikes or impediments in production of the company due to lack of cooperation by the union.

THE ISSUES

1. Wages, and
2. Check-off.

[ED. NOTE: Issue No. 1, discussed in the panel report at this point, is omitted.]

Issue No. 2: Check-Off

The union demands a check-off and the company resists on the ground of the consequent increased cost of operation for the company.

The public member and the industry member believe there is no circumstance which makes it necessary to impose upon this company the burden of checking off the union dues. By no means is it the policy of the Board to award the check-off automatically and in every case simply because the union requests it. There should at least be some showing made by the union as to difficulty of dues collections or some other factor making it necessary to take this responsibility from the union and place it upon the company. There have been no discharges made pursuant to the existing maintenance-of-membership provision because of alleged dues delinquency, nor have there been any requests for such discharge. Under all these circumstances the existing maintenance-of-membership provisions are sufficient to secure the union's status.

Hence, the public member and the industry member recommend accordingly a denial of the request of the union for a check-off.

The labor member recommends that the check-off by the company be inserted as a part of the agreement.

Signed by Rodowe H. Abeken, representing the public; A. B. Bussmann, representing employers; and Robert Logsdon, representing labor.

GALVESTON MODEL LAUNDRY ET AL.—

Decision of Regional Board VIII (Dallas)

In re GALVESTON MODEL LAUNDRY, IDEAL DRY CLEANING COMPANY, MODEL LINEN SUPPLY, REX STEAM LAUNDRY AND DRY CLEANING COMPANY, and UNEEDA LAUNDRY AND DRY CLEANERS [Galveston, Texas] *and* LAUNDRY WORKERS INTERNATIONAL UNION, LOCALS 120 and 131 (AFL). Case No. 111-16407-D [8-D-494], July 26, 1945.

WAGES—SUBSTANDARD RATES—Laundry industry—Inability to pay

Laundry employees are entitled to general eight-cent increase requested by union to correct substandards and maintain intra-plant differentials, such increase bringing minimum rate up to 40 cents an hour and being made retroactive to expiration date of prior contract. Contention that present wage level is already above level supportable by laundry industry generally in region and that, therefore, award is harsh and unrealistic is rejected since award is clearly justified under substandards policy and it is against WLB policy for Board to consider ability to pay.

For other rulings see Index-Digest 295.201, 225.353, and 225.137 in this or other volumes.

Majority decision of Regional Board VIII (Dallas). Opinion by A. Langley Coffey, chairman. Public member concurring: Ogden K. Shannon. Labor members concurring: G. H. Cansler and R. B. James. Employer members dissenting with opinion on wages and retroactivity: Alto B. Cervin and Sam B. Dunbar.

Directive Order

I. The Regional War Labor Board for the Eighth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Disputes Act of June 25, 1943, after sitting as a full Board in lieu of a tripartite panel and after having heard and considered the testimony, evidence, and oral argument of the parties, hereby decides the dispute between the parties and

orders that the following terms and conditions of employment shall govern the relations between the parties:

Wages

The Board orders and directs that the companies shall place in force and effect, retroactive to May 12, 1945, such date being the expiration date of the last contract between the parties, an eight-cent (8¢) across-the-board increase in the straight-time hourly wage rate for all employees herein involved, such eight-cent (8¢) per hour across-the-board increase to be applied both to the hourly and weekly paid employees of each of the respective companies.

An employee who has either quit or been discharged since said date shall receive the amount of the increase for his classification up to the date on which employment with the company terminated. The company and the union shall promptly send a joint letter to each such employee at his last known address, advising him of his rights under this provision. The employee must mail his written application for retroactive pay to the company within 60 days after the date of mailing of the joint letter. The company may voluntarily make the payment in any case even though the 60 days have elapsed. The company shall be obligated to make the payment if good cause is shown for the application being delayed beyond the 60 days. Failure to make the payment where good cause for the delay is alleged may be taken up by the union as a grievance. The 60-day limitation shall not apply to employees who have become members of the armed forces of the United States, either before or within 60 days after the mailing of the joint letter.

The effective date herein ordered is intended solely to require any wage or salary adjustments, payment of which has been withheld pending such order, to be paid retroactively to such date. The effective date given this order is not intended, and shall not operate, as an approval of any wage or salary adjustment effected prior to receipt of any approval required by the Stabilization Act of Oct. 2, 1942, and the orders and regulations issued pursuant thereto and thus made in contravention of such Act, orders, and regulations.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

The effective date of such agreement shall be May 13, 1945, such date being the day following the expiration date of the last contract between the parties or in accordance with the provisions of the presently existing jointly executed partial contract between the parties or any other such date as the parties may mutually agree upon.

The termination date of such agreement shall be one year from the effective date as shown above or in accordance with the termination provision of the presently existing jointly executed partial contract between the parties or any other such date as the parties may mutually agree upon.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless directed by the National War Labor Board, shall take effect fourteen (14) days from the date of mailing hereof, such date of mailing being July 26, 1945, unless in the meantime a petition for review is filed with the Eighth Regional War Labor Board pursuant to the accompanying appeals procedure, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

IV. As required by Executive Orders No. 9250 and 9328, as supplemented by the directive of May 12, 1943, the wage adjustments as provided in Sec. 1 of Part I of this order shall in any event become effective only upon determination by the Office of Price Administration that the wage increases ordered in that section will not require any change in price ceilings or, if no such determination is made, then upon approval by the Director of Economic Stabilization. The parties will be promptly notified of such action. As provided in Sec. 802.40 of the "Rules of Organization and Procedures of the National War Labor Board," this order is subject to review by the National War Labor Board at any time on its own motion.

Opinion of the Board

WAGES

COFFEY, Chairman:—In this case, the parties are in dispute on only one issue, that of wages.

The union proposes an eight-cent across-the-board increase, and the companies are opposed to any increase in the hourly rates of the employees, but urge that the earnings of their employees should be changed from a basis of hourly pay to piece rates or an incentive basis. The companies admit that this Board is without power or authority to order piece rates or an incentive plan over the objection of the union. The union bases its claim for an increase in wages on substandards where present rates are below 55 cents per hour and, where above [55 cents per hour], contends for upward adjustments to maintain present rate differentials. The companies take the position that they are unable to meet the increased cost of wage increases unless the same is offset by increased efficiency of its employees and greater production by them.

An analysis of the union's proposal for an eight-cent across-the-board increase shows that rates for 34 job classifications are approvable on the basis of substandards. Rates for the remaining 12 job classifications are approvable on the basis of maintaining the present rate differentials. Granting the union's request will result in rates of pay for a large number of workers amounting to only 40 cents an hour. The companies seriously contend that they are financially unable to absorb the wage increase proposed by the union.

There are two questions for the Board's determination. The first is should the union's request for the wage increase be granted and second, should the increase be made retroactive.

Company's Ability to Pay

In arriving at a decision in this case, the Board must determine whether the companies' position of inability to pay the increase and remain in business should be the basis to deny workers such wage standards as they may be entitled to under the wage stabilization program.

The National War Labor Board has taken the general position, according to the statement appearing in the "Summary of Significant Board Actions," that the mere fact that the company is operating at a loss is not sufficient reason for the Board to deny a justifiable wage increase. This Board is bound by such policy the same as any other policy of the National Board. Accordingly, a majority of the Board voted to approve the union's request.

The doctrine that the companies' ability to pay should not be a consideration in determining justifiable wage increases is not new to labor problems during this wartime emergency. The War Labor Board, which was established in 1917 to deal with labor problems during World War I, said in the Boston Elevator Company case:

"If the company needs coal or steel in the operation of its roads, it must pay the war prices for these commodities or go without. Similarly, if it needs labor, it must also pay a price commensurate with the present exigency, a price that will enable its employees to meet their greatly increased expenses."

In the first case during the present emergency in which the Board expressed an opinion with respect to consideration of the ability of the company to pay a wage increase, the Aluminum Company of America case [1 War Lab. Rep. 7], the majority opinion states the position of the Board. We quote in part as follows:

"It is generaly recognized in the field of wage economics that ability to pay is not a criterion in a case in which an employer seeks to pay less than the so-called American wage of health and decency because of a claim that he will have to go out of business if he is required to pay such wage. It is generally recognized that, in such a situation no wage tribunal, at least, should fix a wage below the level of health and decency in order to keep such a submarginal industry in operation [1 War Lab. Rep. 15]."

The National Board has fixed the substandard level of wages at 55 cents an hour and this Board would only invite reversal to deny a proposed adjustment in pay where the minimum rate is 40 cents an hour and [where], out of 46 job classifications, rates for all but 12 are approvable on the substandard theory.

Harsh as this rule may appear to be, we think the answer is clearly set forth in the "Summary of Significant Board Actions" as follows:

"There are several aspects of the ability to pay problem. If an otherwise justifiable wage increase is to be withheld because of claims of inability to pay, should a wage increase be granted irrespective of the stabiliza-

tion program on the basis of the ability of the company to pay more? If wage increases were to be granted to employees of a company solely on the basis of the company's ability to pay more, the wage stabilization program throughout the area in which the company is located would be upset. Thus, effective wage stabilization means that a proposed wage increase above the limit set by the wage stabilization program will be denied, irrespective of the ability to pay. Conversely, it would be inequitable to deny justifiable wage increases to employees solely on the basis of the inability of the employer to pay such increases."

Retroactive Wage Payments

The Board directed the wage increases to be made retroactive to May 12, 1945, the date of certification. This Board could not have granted, under National Board policy, any other effective date. This is true even in the face of the respective companies' plea that it works a financial hardship on them. The National Board does not, in general, recognize any distinction between retroactive and current payments in applying the principle of ability to pay. Such was the holding of the National War Labor Board in the cases following: Acme Rubber Manufacturing Company, Case No. 4197-CS-D [19 War Lab. Rep. 397]; and Pal Blade Company, Case No. 111-4208-CS-D [21 War Lab. Rep. 329].

It would thus appear that this Board's action is in conformity with National Board policy.

In conclusion we desire to make it clear that it is not to be inferred from this Board's action that we are not sympathetic with those employers who find it difficult to meet their payrolls because of the economic conditions over which this Board has no control. The National Board has stated from time to time that, if an order by the Board for a wage increase should constitute a destructive hardship for the company, the matter should be worked out through collective bargaining procedure by the company and the union. If the workers can be convinced that the company cannot pay the increase and remain in business, they may be willing to bargain with the employer and reach an equitable solution in terms of the particular situation.

We think this principle is clearly set forth in an opinion of the National Board in the Detroit and Cleveland Navigation Company case [2 War. Lab. Rep. 69], in which it is said:

"The panel and the Board fully understood and took careful account of the fact that the company is operating at a loss and has been doing so for many years. The panel's recommendation has been approved on the familiar principle that, from the practical point of view of equity and good conscience, an award of this kind should not provide a wage scale below the prevailing rate merely because the employer is unable to pay the going rate of wages in his labor market.

"It is true that this well-accepted rule may, in particular cases and perhaps in this case, substantially affect the company's ability to stay in business; and it is also true that if the company goes out of business it cannot any longer employ seamen. Realities of this kind are things which can be taken care of only by direct collective bargaining between the workers through their chosen representatives and the employer. It is only in such bargaining conferences that effect can be given to the desire of employees, if it exists, to choose to work for a subnormal wage rate rather than have the company discontinue its operations."

We make no point of the proposition that the companies are or are not able to absorb the wage increases granted by this Board. This is a matter which the companies and the union can better determine for themselves if they elect to bargain further. If some wage increase less than that directed by the Board in the present case is agreed to by the parties or if some other effective date later than the date ordered is agreed to, they can so stipulate. Of course, any increase in wages agreed to, where the straight-time hourly rates would exceed 55 cents per hour, should not be effected without coming back to the Board on a voluntary Form 10 application even though the Board may have in the given case approved higher rates.

Dissenting Opinion of Employer Members

WAGES

CERVIN and DUNBAR, Employer Members:—[The employer members] dissent from the action taken in this case.

The employers established, by uncontroverted evidence, the following facts:

Bargaining relationships were established in 1939 and have been continuous. During the interim, wage rate increases have been made from 20 cents to 32 cents per hour in minimum wages, and proportionate increases in the higher paid job classifications. Seven cents per hour of such increases have been made since 1941.

Liberal provisions established include the closed shop; union option to stop additional employment when present employees are working less than 40 hours per week; anti-union discrimination clause; arbitration for reestablishment of discharged employees; 8-hour workday and 48-hour workweek; workday between the hours of 7:00 a.m. and 6:00 p.m.; time and a half for overtime or for work before 7:00 a.m. or after 6:00 p.m., and for work on Sundays; one hour for lunch, with doubletime for work during lunch hour; minimum of 4 hours work for employees called for work; 6 holidays with pay, with an addition of June 19 for colored employees; doubletime for work done on holidays; paid vacations of 1 week for employees of 1 year's service and 2 weeks' vacation for those of five years' service; vacation calculations to disregard time lost due to sickness or leaves of absence; plant seniority to control layoffs and rehiring; arbitration of disagreements under the contract; and other liberal provisions as to working conditions.

Increases in straight-time wage rates have been made of 60 per cent since 1939 and 30 per cent since Jan. 1, 1941.

Wage rates of 32 cents per hour in the lower paid job classifications are higher than rates for the same job classifications prevailing in the labor market area of which Galveston is a part and are higher than those prevailing in the laundry industry generally in Region VIII. Likewise, rates in the higher classifications, except in two or three minor particulars, are higher than those prevailing in the labor area or the region.

This is the only group of laundry workers in the labor market area or, for that matter, in the Region that enjoys the liberal provisions as to hours of work, holidays, vacations, overtime, [and] limited day's work that have been established for this group of laundry workers.

Since the bargaining relationship has been established, production efficiency of these employees has decreased 30 per cent or more in each of the 3 laundries.

Claims paid for lost, stolen, and damaged articles have increased from inconsequential amounts to a total for the 3 laundries in excess of $20,000 per year.

The resultant increase in production cost has brought these companies, in spite of greatly increased volume, to earning positions that will not permit of further wage rate increases in the absence of increased production efficiency. In fact, it was testified to and not disputed that present wage rates, under present production costs and inefficiency, cannot be supported when the war-stimulated volume falls off.

For the last 12-month period, 2 companies showed total earnings of $45,707.66, before Federal taxes. One company showed a loss of $11,918.36. The increase in wage rates ordered by this Board for this group of employees for a 12-month period will be $78,059.36. Eventual increases that will have to be made in related job classifications for other groups not covered by the subject contract will be $11,181. The total cost will be $89,240.36.

The inability of the companies to meet these ordered increases is readily apparent. The response of the public and labor members to this situation is that OPA, under the accelerated wage adjustment program for laundries, is ready to grant increases in ceiling prices for laundry service. To this, in turn, the companies protested that prices for laundry service in Galveston are already higher than those prevailing in the Texas Gulf Coast area or, for that matter, elsewhere in Texas; that public resentment is already high against the service rendered by these laundries because of inefficiency and of lost, stolen, or damaged articles; that this resentment will be greatly stimulated by further increases in prices; and that the result will be great loss by the companies of business eventually to the small home laundry machines, to the laundry work the housewife will have done at home, and to competition from the laundries of nearby cities.

In issuing the directive in this case, this Board has violated sound and established stabilization policy: It has disregarded the controlling realities of a critical industry situation. It evades the responsibility of the War Labor Board to work out adjustments that will enable both industry and la-

bor to function during the war emergency period.

By the amended instructions on determination of substandard rates, issued Feb. 28, 1945 [22 War Lab. Rep. No. 1, XI], "The Regional Boards in their discretion may take into consideration appropriate prevailing rates in making their determination." This provision is clearly intended to impose both discretion and responsibility upon the Regional Boards. From the time of the initiation of the substandard wage policy, Regional Boards have had the discretion and the responsibility to administer this policy in dispute cases with due regard to industry and regional limitations. In this case, the public and labor members blinded themselves to the discretion and to the responsibility that clearly rest in and upon this Board. They disregarded a whole group of facts such as have brought other Regional Boards and the National Board itself in laundry cases to exercise their discretion and assume their responsibility to limit corrective wages to those that the involved companies and that the industry of the labor areas can be expected to support.

Among the War Labor Board cases dealing with substandard wages in dispute cases, we believe the case of the Atlanta Laundries, Inc. [17 War Lab. Rep. 150], reflects the consideration that should be given to the facts and to the realities that must be dealt with in these cases. The background facts in that case were on all fours with the facts in this case. The issue as to wage rates, the company's position, and the union position are of surprising similarity to those involved in this case.

On the wage and hour issue, the union in that case contended for increase in the lowest rates from 22 cents to 40 cents per hour and for reduction in the workweek from 50 to 40 hours. The union's position was that the current wage was substandard and that the minimum requested by the union, namely 40 cents per hour, had been established by the Board as the rate to which increases may voluntarily be made without approval and, further, that 50 cents per hour was a rate to which Regional Boards could approve increases on the substandard criteria. The union submitted very full data as to cost of living and quoted authorities. The union pointed out that increase in prices to eliminate substandard wages and price increases to support such wages could be made almost automatically. The union contended that the competitive position of the company would not be adversely effected; that domestic servants received higher wages than the laundry workers; and the union submitted photographs of dwellings of laundry workers as evidence of substandard conditions. The unions objected to the policy that would call in comparative data in determining substandard cases.

The company's position was that substandard criteria [are] relative to the section of the country; that permission to increase wage rates to 40 cents is a limiting rule, and not a compulsory one; that so-called substandard rates should be considered in connection with the prevailing industry rates; that the company was paying prevailing rates for laundries in Atlanta, and this was supported by evidence as to rates being paid by other companies and as to the going wage rate bracket, showing that the company was paying higher than the bracket rates. The company showed that it had lost money the year before and could not pay the increased wages and survive. The company showed further that productivity of labor had steadily declined under the union contract and, finally, that no retroactivity of wages should be allowed, because retroactive price relief was impossible.

The essence of the finding of the panel was that the laundry workers, consisting of about 400 people, were receiving a base wage of 22 cents per hour for a straight 50-hour week; that the wages paid by the company were substantially the same as those paid by the company's competitors in Atlanta; that the wages paid the laundry workers were substantially less than those paid other types of common labor in the Atlanta area, and that they seemed to be even less than the wages paid to domestic servants in Atlanta; and that rectification of such low wages is one of the stated purposes of the National stabilization program.

The panel unanimously recommended an increase of eight cents per hour across-the-board to all laundry and dry cleaning workers of the company. This increase brought the lowest wage rates to 30 cents per hour.

The panel chairman stated that, in arriving at the amount of the proposed increase, the panel had carefully considered all the factors involved. The panel quoted from authorities, among others the expres-

sions of Dean Wayne Morse in the Associated Laundries Case [10 War Lab. Rep. 764] and the letter of the Director of Economic Stabilization, addressed to the members of the National Railway Labor Panel dated June 30, 1943, from which the following quotation was carried in the panel report:

"It is true that the substandard test generally requires a consideration of local circumstances which bear upon accustomed wage levels. The reason for this general approach to the problem of substandard wages is quite plain. If wage levels were judged by comparison with the financial requirements of a minimum standard of living, a considerable percentage of prevailing wages would be found inadequate. The adjustment of such wages in a general upward direction, tending toward achievement of a National minimum standard of living, is a difficult and complicated process. Too swift an adjustment, particularly in regions and areas subject to general economic disadvantage, might seriously cripple important sectors of a regional or area economy, thereby destroying or materially impairing employment opportunities and the living standards of the very workers whose conditions were sought to be improved.

"In ordinary cases, therefore, it is necessary to consider the improvement of substandard living conditions in the light of economic conditions prevailing in a particular region or area."

In the present case, the majority members of the Eighth Regional Board have given consideration only to the fact that the union's demand was for wage rates that are considered substandard. All other considerations were disregarded. The result is a harsh and unrealistic order that, in effect, discredits the companies' exceptional record as to steady increase in the wage rates of these employees, and improvement in their hours of work and in their working conditions generally. The order disregards utterly the companies' suggestion for what is no doubt the only solution through which wage rates of laundry workers in this section can be brought finally above the substandard ranges. (The companies proposed establishment of an incentive wage that would take the present wage rates as the base of guaranteed wage and the working out of arrangements acceptable to both parties that would reward efficient employees, stimulate production, and improve generally the adverse conditions that make impossible a program of material betterment of present wages and working conditions. Two of the employers pointed to their experience with shirt finisher units of four girls each who are on an incentive basis but whose wage rate is the present minimum of 32 cents per hour. These girls are earning 50 cents or more per hour and are happy with their earnings and their work. Employers assert, and there is no reason for the Board to conclude otherwise, that other work in the laundries could be organized along comparable lines were it not for the arbitrary opposition of the union to all incentive plans.)

The Board's order relieves the unions and their members from all accountability for their own deficiencies. The uncontraverted evidence showed these deficiencies to be serious, if not deliberate. In response to the fairest course of treatment that has been accorded in any group of laundry workers in this Region, the production efficiency of these workers over the period of the bargaining relationship has decreased as much as 25 per cent. The claims paid by the companies for lost, damaged, or stolen articles have become one of the heaviest of the operational burdens. But all of this is disregarded. As fair as is these companies' record of dealing with their employees, they have now imposed on them by order of this Board an increase in labor costs that, if accepted by them, will eventually lead to their insolvency. Such an order can only bring discredit upon this Board. Such an order cures nothing. It holds out false hopes to the workers. To the companies involved, and to other industries as well, this order must bring a sense of futility. Under any possible circumstances, the result cannot be wholesome, and to this order, we the industry members, register serious dissent.

The industry members believe that the advances already effected by the employees in the wage rates and working conditions enjoyed by their employees bring these to higher levels than those supported or supportable by the laundry industry generally in this Region. They believe, also, that these employers should not now be forced to make a choice between direct increases in labor costs that will

mean insolvency or increase in prices for their services that will inevitably result in great loss to the competition these and other laundries must meet if they are to survive.

In view of all of the facts that should control this case, the industry members protest that the directive in this case should have been to the following effect:

"That, for the term of the contract, beginning May 12, 1945, no increase in base wage rates is ordered; and

"That the Eighth Regional War Labor Board finds the earnings of the employees covered by the contracts involved in this controversy can be increased to levels that eventually will be above the substandard only through increased production inefficiency and that the Board commends to the parties the study of an incentive wage rate plan that will take the present wage rates as the base or guaranteed wages and establish additional pay for employees or teams of employees who increase their production above standards that will be agreed upon by both parties as fair."

A further basis of the industry members' dissent is that the Board ordered the wage rate increases be made effective as of the expiration date of the old contract. On the showing made by these employers of their inability to meet any wage rate increases without price increases and on the whole record of the employer-employee relationships, this Board had the authority, and should have exercised the discretion, to order that the increased wage rates should become effective on the date that the Office of Price Administration should authorize increases in price ceilings or should find that such increases are not necessary to meet the wage rate increases. As a matter of fair and sound dealing and administration, the directive of this Board in this case should have included such provision.

LABOR STANDARDS ASSN.—

Decision of Regional Board III (Philadelphia)

In re Labor Standards Association [Pittsburgh, Pa.] *and* Hotel and Restaurant Employees International Alliance and Bartenders International League of America, Local 237 (AFL). Case No. 111-14063-HO, July 20, 1945.

WAGES — SUBSTANDARD RATES—General increase to eliminate substandards

Hourly wage rates for all job classifications of restaurant employees in five department stores are raised by 2½ cents per hour under Board's authority to eliminate substandards, where some rates are substandard and general increase rather than tapering adjustments is indicated by intraplant considerations. Aggregate amount awarded equals aggregate which would have been required to establish minimum standard rate of 55 cents for all nontipped employees and rate of 45 cents for those receiving tips and meals.

For other rulings see Index-Digest 295.600 in this or other volumes.

PREMIUM WAGE RATES—Time and one-third after 8 hours a day or 40 hours a week

Restaurant employees in five department stores are entitled to receive time and one-third for hours in excess of 8 a day or between 40 and 44 a week and time and one-half for all hours in excess of 44 a week. Premium pay ordered will correct intraplant inequity both within unit comprising restaurant employees and between restaurant employees and remaining department store employees.

For other rulings see Index-Digest 140.415 in this or other volumes.

CHECK-OFF—Union-shop contract—Aid to enforcement—Collection difficulties

Union of restaurant employees, whose contract provides for modified form of union shop, is granted automatic check-off clause where (1) delinquency in dues payments has been problem of increasing seriousness to union because of high turnover of personnel and scattered location of stores involved and (2) union has re-

frained from requiring discharge of members not in good standing.

For other rulings see Index-Digest 20.722 and 20.790 in this or other volumes.

Majority decision of Regional Board III (Philadelphia) affirming recommendations of hearing officer. Public members concurring: Sylvester Garrett and Francis D. Tyson. Labor members concurring: John B. Backhus and Gervase N. Love. Employer members dissenting: J. W. Trauernicht and S. E. Lauer.

Directive Order

The Regional War Labor Board for the Third Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

I. (1) The hourly wage rates for all job classifications shall be increased 2½ cents per hour.

(2) (a) One and one-third times the regular wage rates shall be paid to all employees involved in this dispute for all hours worked between 40 and 44 hours per week.

(b) One and one-half times the regular wage rates shall be paid to all employees involved in this dispute for all hours worked in excess of 44 hours per week.

(c) One and one-third times the regular wage rates shall be paid for all hours worked in excess of 8 hours per day in the case of male employees and for all hours worked in excess of 7 hours and 20 minutes in the case of female employees.

(d) There shall be no pyramiding of overtime payments for the same hours worked. Daily or weekly overtime payments shall be made depending upon whichever is the greater.

(3) The foregoing adjustments shall be paid retroactively to Nov. 1, 1944, in accordance with the agreement of the parties. The procedure to be followed in making retroactive payment to those employees who have either quit or been discharged shall be in accordance with the National Board's Resolution of April 2, 1943 [26 War Lab. Rep. 3].

(4) The company shall deduct from the wages and turn over to the proper union officials the monthly union dues and assessments of all employees who are now members of the union and the intiation fees and monthly union dues and assessments of all employees who hereafter become members of the union. The union shall, within 15 days of the date hereof, file with the company a notarized list of its present members.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby as ordered by the National War Labor Board.

III. The union's request for overtime after completion of the regular daily shift of "short shift" employees is denied.

IV. This order shall stand confirmed as the order of the National War Labor Board unless, within 14 days from the date hereof, a petition for review is mailed to or filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs, or has otherwise directed or the parties otherwise agree.

V. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately effective.

Report and Recommendations of the Hearing Officer

May 24, 1945

PARTIES TO THE DISPUTES

This dispute involves the Labor Standards Association which represents Kaufmann Department Stores Inc., Joseph Horne Company, and certain outside interests who lease and operate the restaurants of Frank and Seder, Rosenbaum Company, and Gimbel Brothers, who are the employers, and the Hotel and Restaurant Employees International Alliance and Bartenders International League of America, Local 237 (AFL). The union

is the sole collective bargaining agency of the restaurant employees of the aforementioned stores. Approximately 375 employees are involved in all.

ISSUES

The union has separate contracts with each of the aforementioned employers, all of which expired on Nov. 1, 1944. Negotiations since that date have been unsuccessful in resolving the issue of:

I. Wages,
II. Hours of work and overtime, and
III. Check-off.

The parties are agreed that any wage adjustments ordered by the Board shall be retroactive to Nov. 1, 1944.

I. Wages

The union requests that:

(a) The wage rates for each job classification be increased to the highest rate being paid for that classification in any of the five store.

(b) Thereafter, all wage rates to be increased by five cents per hour, and,

(c) The minimum wage for any job classification be set at 55 cents per hour.

(d) Ten dollars per day be paid for the first day and $9.00 for succeeding days for extra waiters and waitresses, and an increase of 50 cents per meal for extra cooks.

Union's Position

The union bases its requests on claims of inter-plant and intra-plant inequities and on the correction of substandard rates. In support of the claim of inter-plant inequities, the union points to the fact that Pittsburgh itself is a heavy industry area and that in comparison to the rates paid by industry in general the companies' rates are extremely low. The union further claims that different rates should not be paid for the same jobs, and, therefore, all of the stores' rates should be equalized at the highest level for each classification in order to correct intra-plant inequities.

The union asserts that since the subject employees are among the lowest paid workers in any industry, they are affected most seriously by the rise in the cost of living. The Board has recognized this by lifting the substandard level to 55 cents per hour. The union asks that this rate be applied as a minmium rate since a lower level is inadequate to maintain any worker at even a subsistence level.

Company's Position

The companies maintain that since the Little Steel formula has been exhausted no further increases are permissible under stabilization policy. In 1944 the company and the union joined in a Form 10 application requesting approval of a general increase of 3½ cents per hour. This application was approved only in part, thus indicating that no further adjustments are possible.

The differences in rates paid by the five stores are due to differences in job content, to personalized rates in some instances and, in others, to the results of collective bargaining over a period of years. For these reasons, the company declares that the union's claim of intra-plant inequities is not valid. Furthermore, since there are five separate stores, it is improper to cite differences in rates as intra-plant inequalities.

Discussion and Recommendation

Intra-plant Inequities: — Although there are certain variations in the rates paid for the same job classification by the five stores, this does not establish of itself the existence of intra-plant inequities. In some instances the contents of the jobs involved vary to some degree as, for example, in the case of cooks whose responsibilities vary depending upon whether they are employed in a tea room, a cafeteria, or a dining room. There are also understandable differences between the skills required in the case of salad and sandwich makers depending upon the type of restaurant where they are employed. Lastly, the collective bargaining history of the parties lends further validity to the companies' claim that certain differentials have either been negotiated or accepted. In this connection it is noted that in 1944 the parties, in filing a Form 10 application for a general increase, made no mention of intra-plant inequities. Their request for approval of a general increase seems to be a strong indication that rate differentials at that time did not constitute intra-plant inequities, and it is not claimed that conditions have changed since that time. Accordingly, it is recommended that the union's request that rates for each classification be brought up to the top rate paid by any one store be denied.

Inter-plant Inequities:—Three hundred and seventy-four employees are involved in this case. Of these, 234

are non-tipped employees who are paid a cash hourly wage rate and receive, in addition, two meals per day if they work 30 hours or more per week, or one meal if they work less than 30 hours per week. The tipped employees consist of 140 waiters and waitresses who receive in addition to tips a cash hourly wage rate plus one or two meals per day depending upon the number of hours worked per week. Brackets established by the Board permit comparison of the rates of 346 of the employees involved with such brackets. On the basis of this comparison, it is found that present rates are above bracket minima by an average of 1.1 cents per hour. Thus, no wage adjustments are indicated on the basis of inter-plant inequities.

Substandards:—Although the union states that a 55-cent per hour minimum rate should be applied on the basis of Board policy, this Board does not apply a 55-cent per hour rate automatically in dispute cases. Up to the present time the Board has determined the appropriate amount of wage increases based on the elimination of substandards on a case by case basis. Nevertheless, as noted in the opinion of Chairman Sylvester Garrett in the case of the M. J. Grove Lime Company (111-10380-D [24 War Lab. Rep. 405]), this Board will ordinarily order some increase in substandard wage rates even though they may be in line with prevailing rates for comparable work in the labor market area. The opinion further notes that in the Cotton Textile case the National Board deemed it proper to raise substandard rates at least five cents per hour above prevailing industry rates. In the Elite Laundry Case (19 War Lab. Rep. 321), the dissenting opinion of the public members of this Board indicated a willingness to order an increase of five cents per hour in order to partially eliminate substandard rates even though such increase would raise the rates above prevailing industry rates. Finally, in the M. J. Grove Lime case this Board ordered an increase of five cents per hour lifting the common labor rate to 55 cents per hour, at least five cents above the prevailing rates in the area involved.

On the basis of the foregoing, it is consistent with Board policy to apply the substandard rate of 55 cents per hour and to examine the indicated increase on this basis in relation to prevailing rates.

Of the 234 non-tipped employees, 161 are receiving wage rates (increased by two cents per hour per daily meal) which are below 55 cents per hour by an average of 4.4 cents. The rates of the remaining 73 non-tipped employees are above the substandard level.

In determining what adjustments are indicated to correct substandards in the case of the tipped employees, a 45-cent per hour rate has been used as the point of departure. Although the Board has not yet determined the appropriate rate to be used in measuring substandards in the case of tipped employees, a 45-cent hourly rate (plus meals) appears to be proper since a 40-cent rate (plus meals) was applied at a time when 50 cents was the substandard point for non-tipped employees. In light of the Board's action in raising the substandard level to 55 cents, it seems logical to apply a 45-cent rate for tipped employees. Of the 140 tipped employees involved, the rates (plus meal allowance of 2 cents per hour per daily meal) of 75 are found to be substandard by an average of 8/10 of 1 cent per hour. The rates of the remaining tipped employees are not substandard.

Combining the above calculations for both groups of employees, it is found that 236, or 63 per cent of all who are involved, are receiving wage rates which are substandard and that the average departure from the substandard level (55 cents in the case of non-tipped and 45 cents in the case of tipped employees) is 3.4 cents per hour. Applying the "hotel" formula with this base of 3.4 cents per hour, the total overall increase indicated is $9.52 per hour. This amount has been derived as follows:

Non-Tipped Employees

Rate Range Per Hour	Amt. of Increase		No. of Employees
46¢ to 48¢ ...	100% or	3.4¢	24
48.1¢ to 62¢ ...	75% or	2.6¢	185
62.1¢ to 71¢ ...	50% or	1.7¢	6
Over 71¢	25% or	.0085¢	19

Tipped Employees

41¢ to 43¢ ...	100%		0
43.1¢ to 57¢ ...	75% or	2.6¢	140

The total increase indicated $9.52 per hour divided by the total number of employees, 374, equals an average increase of 2.5 cents per hour. It is believed that a general increase of 2½ cents per hour will be more appropri-

NOTE: Wage rates shown include 2 cents per hour per meal.

ate than a tapered increase using the 3.4 cents per hour base for the following reasons:

1. In 1944 the parties filed a Form 10 application proposing an across-the-board adjustment of 3½ cents per hour. The Wage Stabilization Director approved increases of 3½ cents per hour for the lowest-rated employees and tapered increases of lesser amounts down to 1 cent per hour for higher-rated classifications. Thus, the wage structure has already been subject to the tapering principle which, of course, had the effect of reducing the differentials between the various job rates. Present differentials between some of the lower rated jobs are as little as from 1 cent to 1½ cents per hour in many instances.

2. Although the union has pressed for the elimination of what it terms intra-plant inequities, the company denies the existence of such inequities, and further, it has been recommended that the union's request for elimination of inter-store differentials be denied for reasons found elsewhere in this report.

On the basis of these facts, a general increase rather than a tapered increase is indicated; such increase which is derived from the application of the "hotel" formula and the resultant total increase applied on an average to all the employees involved is equal to 2½ cents per hour.

On a straight bracket comparison it was found that the company's rates are, on the average, 1.1 cents per hour above bracket minima. Thus, a general increase of 2½ cents per hour will bring the rates to a point 3.6 cents per hour above the brackets. It may, therefore, be said that the resultant rates will not be out of line with prevailing rates for comparable work in the restaurant industry in Pittsburgh. Even if it could be determined that the brackets for this industry are set at the level of prevailing rates instead of at a point somewhere below prevailing rates, the instant recommendation is still well within past decisions of the Board in the cases involving the M. J. Grove Lime Company, the Cotton Textile case, and the Elite Laundry Company where the Board ordered adjustments resulting in rates up to five cents per hour above prevailing rates.

Accordingly, it is recommended that the Board order a general increase of 2½ cents per hour retroactive to Nov. 1, 1944, the expiration date of the most recent contract, and the date agreed to by the parties. The foregoing adjustment shall apply to "extra" waiters, waitresses, and cooks as well as to all other employees.

II. Hours of Work

The union requests that overtime be paid to all employees after the expiration of the daily shift and after 40 hours per week at the rate of time and one half.

Union's Position

The union claims that its contracts in the restaurant industry provide that overtime be paid at the rate of time and one half after 44 hours for the great majority of the employees in the industry. The union further states that most of the restaurant employees of the department stores currently receive overtime at the rate of time and one-third after 40 hours whereas some of the employees do not. The union declares that this results in an inequity which should be corrected. In addition, the union asserts that the practice of the restaurant industry in Pittsburgh is to pay daily overtime after 8 hours and, in some cases, after the completion of a daily shift.

Company's Position

The companies oppose any revision in the number of hours worked before weekly overtime is paid since they claim that the practice of the restaurant industry in Pittsburgh is to pay overtime after 44 hours per week. The companies claim that any liberalization of the overtime provision would be unstabilizing in the restaurant industry.

The companies declare that the three stores that pay overtime at the rate of time and one half do so because the restaurants are leased to outside interests, and it is thus recognized that those restaurants are in the same category as hotels, restaurants, and cafeterias in the area. The companies contend that the existing overtime rate of time and one-third in the two store-owned and operated restaurants recognizes an historical practice of long standing. The great majority of employees in Pittsburgh department stores are paid at the rate of time and one-third for overtime work.

The companies also oppose the payment of overtime upon the completion of a daily shift. They point to the fact that some employees regularly work only a 4-hour or 6-hour shift. If overtime were paid after 4 or 6 hours, this would create an inequity with full time employees, who work at straight time for 8 hours per day. However, the companies offer to pay overtime at the rate of time and one-half after 8 hours in a day to males and after 7 hours, 20 minutes per day (1/6 of 44 hours) to females.

Discussion and Recommendation

At the present time the point at which overtime begins and the rate of such overtime varies among and within the five stores.

Store	No. of Employees	Overtime Computation
Kaufmanns	4 male cooks	Time and ⅓ after 48 hours
	28 males	Time and ⅓ after 40 hours
	127 females	Time and ⅓ for hours between 40 and 44 and time and ½ after 44 hours.
Joseph Horne	2 males	Time and ⅓ after 40 hours
	26 females	Time and ⅓ for hours between 40 and 44 and time and ½ after 44 hours
Gimbels	8 males	Time and ½ after 48 hours
	92 females	Time and ½ after 44 hours
Frank and Seder	4 males	Time and ½ after 48 hours
	32 females	Time and ½ after 44 hours
Rosenbaum	2 males	Time and ½ after 48 hours
	49 females	Time and ½ after 44 hours

Thus, 326 of the 374 employees involved, or approximately 87 per cent, currently are paid time and one-half after 44 hours per week. Of these, 183 or slightly less than 50 per cent, receive time and one-third for the hours between 40 and 44 per week.

Although five contracts are negotiated annually for the restaurant employees in the five stores, all such negotiations have been conducted jointly over a period of years. The Labor Standards Association represents not only the two stores that operate their restaurants but also the outside interests that lease the restaurants in the other three stores. Considered in this light, the fact that 87 per cent of the employees involved currently receive premium pay at the rate of time and one-half after 44 hours per week constitutes an inequity. Furthermore, a majority of the employees in the restaurant industry receive time and one-half after 44 hours per week.

In the case of Gimbel Brothers et al. in Philadelphia and the Hotel, Restaurant and Service Employees Union, (111-7476-HO) the Board ordered the payment of time and one-half after 44 hours instead of 48 hours to male employees since the majority of the employees, who are females, already received such overtime pay.

On the basis of the foregoing, it is recommended that overtime be paid at the rate of time and one-half after 44 hours per week to all employees.

As noted above, 183 of the employees involved received premium pay at the rate of time and one-third for the hours between 40 and 44 per week. The facts noted above in connection with overtime after 44 hours are also pertinent in connection with the instant issue. Approximately one-half of the employees in the unit currently receive time and one-third for the hours between 40 and 44. The granting of such premium pay for the remaining employees is therefore consistent with the established practice within the unit. However, this adjustment is not consistent with the practice of the restaurant industry as a whole in Pittsburgh. It is, nevertheless, found to be the overwhelming department store practice since more than 85 per cent of all department store employees receive time and one-third after 40 hours per week. In the opinion of the hearing officer, the latter factor should be considered as controlling since there is little doubt but that the restaurant operations of the stores have been traditionally considered as a basic part of department store operations. One indication of this fact is the existence of such an inherent department store characteristic as the peak week * pro-

* For six peak weeks during each calendar year all employees work an additional four hours each week at straight time.

vision in the contracts of Kaufmann and Hornes' where 50 per cent of the employees involved are employed. It is true, as the companies point out, that the other three stores do not have this peak week provision and it is argued, therefore, that in the case of those three stores the restaurant operations are not characterized as department store operations. However, an examination of the contracts between the union and all of the employers involved in the instant case reveals that, with minor exceptions, the terms and conditions of employment negotiated in each case are identical. Thus, if restaurants in two of the stores are considered as an integral part of department store operations, the mere fact that the restaurants in the other three stores do not have the peak week provision does not establish that the latter restaurants must be considered as being outside the scope of the department store field. Furthermore, as hereinbefore noted, to all intents and purposes, the subject restaurants must be considered as one bargaining unit in view of their historical and current collective bargaining relationship and the almost identical nature of the terms and conditions of employment found in their contracts. In view of these facts, it is recommended that overtime at the rate of time and one-third for the hours between 40 and 44 per week be ordered to correct what is tantamount to an intra-plant inequity both within the unit comprising the restaurant employees and with the remaining department store employees.

The union requests that overtime be paid at the rate of time and one-half after eight hours in one day or after the completion of a daily shift. Although the union attempts to justify this request on the basis that such is the prevailing practice in the restaurant industry as a whole in Pittsburgh, it appears necessary to examine this request in terms of the practice of the department stores since, as noted above, it has been found that a more fundamental relationship exists between the working conditions of the subject employees and other department store workers than between subject workers and the restaurant industry as a whole. The companies offer to pay daily overtime at the rate of time and one-third after 8 hours in the case of male employees and after 7 hours, 20 minutes in the case of female employees. This offer is consistent with the present practice as it pertains to the great majority of all department store employees. On this basis, it is recommended that the union's request for daily overtime of time and one-half be denied but that time and one-third be ordered for work in excess of 8 hours per day for males and after 7 hours, 20 minutes per day in the case of females.

It is also recommended that the union's request for overtime after the completion of a daily shift be denied since it is believed that there is considerable merit in the companies' position that this adjustment would create inequities as between regular employees working eight hours per day at straight time and "short shift" employees whose regular shift consists of four or six hours and who would receive premium pay for hours in excess of four or six under the union's proposal.

III. Check-off

The union requests that dues, initiation fees, and assessments be checked off by the company.

Union's Position

The present contracts between the department stores and the union provide for a modified form of union shop. In almost 100 per cent of the union's contracts where there is such a provision this is supplemented by the check-off. Such a provision would lessen the possibility of disputes between the company and the union and would also tend to aid the company in lessening turnover. Although the union has been lenient in not pressing for the discharge of delinquent members it could do so at any time and thus create choatic employment conditions. At any one time there is a relatively large number of employees who are delinquent in their dues payments. The union's failure to press for their discharge only makes matters worse since employees who ordinarily pay their dues promptly react unfavorably when they note that other employees are not discharged for periodic nonpayments. A further source of friction without the check-off is the sick leave benefits paid by the union. The rules provide that a member cannot collect such benefits unless he has been in good standing for two consecutive months. Many employees who fall ill are not in good standing and there-

fore do not receive benefits. Upon their return they are forced to eventually pay their back dues. Such members of course become resentful even though the nonpayment of benefits was due to their own dues delinquency. If the Board orders the check-off, all of the above causes and potential causes of friction will be removed.

Company's Position

The member stores of the Labor Standards Association have collective bargaining relations with 20 unions with upwards of 50 contracts and not one contains a check-off clause. The demand for the check-off has been made from time to time by the unions involved but in each case, prior to the execution of the contract, the unions have withdrawn their demands. Although the War Labor Board has ordered the check-off in dispute cases involving other groups or department store employees, this has never been put into effect usually because the union changed its mind after the Board's order or, as in one case, because the Board was asked to rescind its order. The company states that it should also be noted that the employers in this industry have been far in advance of the minimum requirements of maintenance of membership normally ordered by the Board.

Discussion and Recommendation

The contract between the parties involved provided for a modified form of union shop for a number of years. (Present members must retain membership and all new employees required to join the union.) Although the union has requested the check-off in past years to supplement this union-security provision this has never been a problem of increasing seriousness to the union in the past few years, being due, in part, to a relatively high turnover of personnel. The union's responsibility and democracy are not challenged by the company. In fact there is evidence to indicate a high degree of responsibility on the part of the union which has refrained from embarrassing the employers by demanding literal application of the union-security provision which would permit the union to seek the discharge of any or all members not in good standing. A further fact is that no stoppages of work have occurred because of the difficulty of dues collections without the check-off under a condition of high turnover or for any other reason.

The company's opposition stems from its feeling that the issue should be decided on the basis of department store practice, and, since no other unions enjoy the check-off, it should be denied to the subject union. However, the Board has seldom, if ever, decided this issue on such a basis. Rather does the Board consider that the check-off is a supplement to basic union security to be granted in these situations, among others, where a certain amount of difficulty is entailed in the collection of dues. In the instant case it appears to be a fact that the union has been unable to handle the dues collection problem adequately both because of frequent employee turnover and because of the scattered location of the restaurants, tea shops, and cafeterias of the stores involved. With regard to the lack of desire for the check-off on the part of other unions with which the company has contracts, it does not appear that the subject union should be bound by what other unions may have decided to waive especially in a matter of this kind where no question of an intra-plant inequity is involved.

On the basis of the foregoing, it is recomended that the parties' union-security contract provision be supplemented by an automatic check-off of dues, initiations fees, and assessments.

SUMMARY OF RECOMMENDATIONS

It is recommended that the Board order:

1. A general wage increase of 2½ cents per hour.

2. Overtime be computed at the rate of time and one-third for the hours between 40 and 44 per week and at the rate of time and one-half for all hours in excess of 44 per week.

3. That overtime at the rate of time and one-third be paid after 8 hours per day in the case of male employees and after 7 hours, 20 minutes per day in the case of female employees.

4. The above provision shall be retroactive to Nov. 1, 1944, as agreed to by the parties.

5. That dues, initiation fees, and assessment be automatically checked off.

6. The union's request for overtime pay after completion of the regular daily shift for "short shift" employees be denied.

Signed by Marvin J. Miller, hearing officer for the Board.

Cumulative
Index-Digest
Covering Volume 26 to Date

Rulings by the National War Labor Board, its regional boards and commissions, and the courts made in the decisions appearing in this volume, represented by headnote paragraphs, appear in the following pages arranged and classified by subject matter.

Headings of the principal divisions are arranged alphabetically as are also the headings of the subdivisions, with a few exceptions to bring related subjects together. The purpose of the classification is to afford rapid reference to rulings regarding any particular subject matter.

Numerical designations are given to each main heading and all subheadings to facilitate ready reference to the place in the Index-Digest at which material under such headings and subheadings appears. The same and additional headings with their numerical designations appear in other volumes of WAR LABOR REPORTS, *thus assuring ease in locating rulings on a particular topic in all volumes.*

Main topics appear in capital letters and are designated by numbers followed by a decimal point but without digits beyond the decimal points. All subtopics and their subdivisions are designated by numbers having three digits after the decimal point. Subtopics immediately follow their designating numbers. Subdivisions thereof at the first level are separated from their numbers by one dash; those at the second level, that is, subdivisions of a subdivision, are separated from their numbers by two dashes. In some instances finer or less fine topical breakdown is used in one volume as compared to others.

For assistance in using the Index-Digest of the volumes as a unit, the reader is referred to the "Key" to Volumes 1-20, issued as a special supplement to 25 War Lab. Rep., No. 1 (June 27, 1945). Under each subject heading appear names of relevant cases with volume and page references to headnotes and text.

Rulings made by regional boards, commissions, and courts are so indicated in the Index-Digest. All other rulings are those of the National Board.

The main topics of the classification scheme appear below. Those topic headings which appear with a prefixed star (★) will be found in the Cumulative Index-Digest in this issue; those without the prefixed star appear in other volumes and may appear in later cumulations in this volume.

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Index-Digest

10. ARBITRATION

10.100 Subject Matter of Arbitration

10.101 —In general

Contract should provide that provision requiring annual wage guarantee is not subject to arbitration, as ordered by Regional Board. (1) Union claims that "to grant company right to arbitrate permanent layoffs if business conditions dictate such course would threaten security of workers" and (2) provision for no arbitration of guaranteed wage clause is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's appeal for review is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Employer's request that apprentice ratio be liberalized is denied since there is no likelihood of companies being able to hire more apprentices at present and union has, in past, showed willingness to relax ratio to meet particular needs. Contract should, however, provide for arbitration of any disputes arising from union's refusal to permit exceptions.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

10.103 —Arbitrability of issue

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether employers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

10.124 —Discharge

★ Parties whose grievance procedure does not provide for arbitration should submit to arbitration grievances presented by union over (1) alleged discharge of employee without just cause and (2) refusal to reinstate employee returning to work after sick leave. Issue to be arbitrated in second dispute is whether company's refusal to reinstate employee was based on report of plant physician or on some other reason which is not ground for refusal to grant reinstatement under contract.—Goodyear Aircraft Corp., 26 War Lab. Rep. 143.

10.127 —Grievance under union contract

★ Parties whose grievance procedure does not provide for arbitration should submit to arbitration grievances presented by union over (1) alleged discharge of employee without just cause and (2) refusal to reinstate employee returning to work after sick leave. Issue to be arbitrated in second dispute is whether company's refusal to reinstate employee was based on report of plant physician or on some other reason which is not ground for refusal to grant reinstatement under contract.—Goodyear Aircraft Corp., 26 War Lab. Rep. 143.

10.137 —Interpretation of contract

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.—General Motors Corp., 26 War Lab. Rep. 53.

10.150 —Merit increases

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether employers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

10.173 —Suspension

★ Parties in process of negotiating first contract who have agreed verbally on grievance procedure not terminating in arbitration should submit to arbitration dispute over company's suspension of 20 employees for refusal to perform work

assigned by their supervisors. Arbitrator should decide whether company's action was unreasonable or arbitrary under circumstances of case.—Glenn L. Martin Co., 26 War Lab. Rep. 144.

10.196 —Work rules

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Umpire may consider application of rule under all circumstances of case which include fact that rule was not in effect in plant from which suspended employees had been recently transferred. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.—General Motors Corp., 26 War Lab. Rep. 53.

15. BONUS PAYMENTS

15.050 Attendance Bonus

Region III (Philadelphia)

Company's request that Board order discontinuance of attendance bonus provision of prior contract is granted since, among other things, (1) attendance bonuses are not usually approved by WLB and (2) scheduled seven-day workweek in effect when bonus was originally approved has been reduced to six-day workweek. (Region III—Philadelphia)—Armstrong Cork Co., 26 War Lab. Rep. 90.

15.416 Discontinuance of Bonus

Region III (Philadelphia)

Company's request that Board order discontinuance of attendance bonus provision of prior contract is granted since, among other things, (1) attendance bonuses are not usually approved by WLB and (2) scheduled seven-day workweek in effect when bonus was originally approved has been reduced to six-day workweek. (Region III—Philadelphia)—Armstrong Cork Co., 26 War Lab. Rep. 90.

15.800 Wage Increase to Offset Discontinued Bonus

★ Union's request for increase to compensate for alleged inequalities caused by discontinuance of incentive bonus is denied since job rate adjustments previously directed by Board adequately compensate for discontinuance of bonus.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

20. CHECK-OFF

20.300 Voluntary Dues Deduction

20.325 —Check-off with escape clause

Region VII (Kansas City)

★ Union whose existing contract provides for maintenance of membership without escape clause and for voluntary check-off is awarded non-revocable check-off provision to apply to all employees who do not, within 15 days of date of Board's order, notify company that they do not wish to submit to check-off arrangement. Escape period is provided on theory that employees must have free opportunity to escape from union-security clauses included in contracts by Board order. (Region VII—Kansas City)—Airtherm Mfg. Co., 26 War Lab. Rep. 220.

20.700 Reason for Granting Check-Off

20.715 —Dues collection difficulties

20.722 — —Physical barriers to collection

Region III (Philadelphia)

★ Union of restaurant employees, whose contract provides for modified form of union shop, is granted automatic check-off clause where delinquency in dues payments has been problem of increasing seriousness to union because of high turnover of personnel and scattered location of stores involved. (Region III—Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

20.779 —Responsible union

★ Responsible union is entitled to voluntary check-off with proviso that neither party should coerce any employee into signing dues deduction certificate. Regional Board's order denying check-off because of small size of bargaining unit and because company permitted dues collection on company property is accordingly reversed.—General Motors Corp., 26 War Lab. Rep. 145.

20.790 —Union shop, enforcement

Region III (Philadelphia)

★ Union of restaurant employees whose contract provides for modified form of union shop, is granted automatic check-off clause where (1) delinquency in dues payments has been problem of increasing seriousness to union because of high turnover of personnel and scattered location of stores involved and (2) union has refrained from requiring discharge of members not in good standing. (Region III—Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

32. COLLECTIVE BARGAINING

32.820 Unit for Bargaining

32.857 —Unit determined by NLRB

Region V (Cleveland)

Union certified by NLRB as bargaining representative of patternmakers and patternmaker apprentices is entitled to represent employees classified as helpers if they are doing approximately same work as patternmakers or patternmaker apprentices where, subsequent to NLRB determination, it was discovered that company had classification of helpers. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

37. CONTRACTS

37.350 Duration of Contract

37.365 —Extension of contract

Board vacates Regional Board's order directing inclusion in contract of clause providing that, if notice of termination or desire to revise agreement is given during war emergency, contract should be extended beyond termination date until new agreement is reached or matter is resolved by War Labor Board.—Alabama Mills, Inc., 26 War Lab. Rep. 12.

41. DEFINITIONS

41.650 Status Quo

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

46. DISCHARGE AND REINSTATEMENT

46.200 Reason for Discharge

46.206 —Contract violation

Region I (Boston)

Contract should include clause agreed to by parties under which employer will discharge any member of union who does not comply with union laws or contract working conditions within 24 hours after receiving notice from union. (Region I—Boston)—U. S. Rubber Co., 26 War. Lab. Rep. 85.

46.213 —Fighting

Company should reinstate with back pay and full seniority employee with twelve years' seniority discharged for violating strictly-enforced no-fighting rule, where discharged worker was deliberately provoked into attacking much younger, more robust employee with approximately three years' seniority, who wanted to obtain discharge of senior employee in order to protect his own job. As penalty for knowing violation of company's rule, employee should be penalized by denial of back pay for approximately three months of total time lost from work.—Lion Oil Refining Co., 26 War Lab. Rep. 46.

46.350 Reinstatement by Board Order

46.410 —Reinstatement pending settlement of dispute

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

46.425 —Reinstatement with back pay

Company should reinstate with back pay and full seniority employee with twelve years' seniority discharged for violating strictly-enforced no-fighting rule,

where discharged worker was deliberately provoked into attacking much younger, more robust employee with approximately three years' seniority, who wanted to obtain discharge of senior employee in order to protect his own job. As penalty for knowing violation of company's rule, employee should be penalized by denial of back pay for approximately three months of total time lost from work.—Lion Oil Refining Co., 26 War Lab. Rep. 46.

49. EMPLOYEES' BENEFITS

49.300 Insurance Benefits

Region I (Boston)

Union's request for employer-financed insurance plan of type which is uniform in area is refused where company contended, among other things, that it already has contributory group life insurance plan in effect in all its plants and that to order another form of insurance for one plant only would have far-reaching repercussions on company's structure. (Region I—Boston)—U. S. Rubber Co., 26 War Lab. Rep. 85.

Region X (San Francisco)

Union's request that three wholesale jewelers contribute to group insurance plan administered by union is denied despite panel's findings that (1) 96⅓ per cent of firms and 99 per cent of similar employees in jewelry industry in area are covered by union's plan, (2) National Board has policy of awarding insurance plans under extraordinary circumstances, and (3) overwhelming area practice present in instant case constitutes such extraordinary circumstance. (Region X—San Francisco)—San Francisco Wholesale Jewelers, 26 War Lab. Rep. 78.

49.800 Sick Benefits

Regional Board's order directing company to grant 6 days' sick leave per year with full pay is vacated, despite fact that such plan is prevailing practice in industry in area, since Board will not order sick leave plans in dispute cases in absence of one of two following "unusual" circumstances: (1) In cases where unusual health hazards might justify paid sick leave, and (2) in cases where comparison of total benefits under other plans in operation at same company indicate inequity to employees involved in particular dispute.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Company which has liberal group health insurance plan for employees with one or more years of service should grant 3 days' sick leave to employees with 6 to 12 months' service in accordance with its counterproposal to union's demand for 6 days' sick leave for all employees.—Melville Shoe Corp., 26 War Lab. Rep. 30.

65. HOURS OF WORK

65.180 Call-In Time

Employee requested to work but sent home because of lack of work should receive minimum pay of three hours at his regular hourly rate, even though employee is prevented from working by existence of work stoppage in which he is not participating.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

65.500 Reduction of Working Hours

65.508 —Curtailment of operations

Region V (Cleveland)

Union of patternmakers is entitled to clause in first contract providing that there shall be no layoffs as long as there is sufficient work to provide employees average of 24 hours' work per pay period. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

65.730 Travel Time

Employees of ordnance plant are not entitled to portal to portal pay, despite contention of union that employees must travel as much as 15 minutes from plant gate to place where they are required to report. Board is desirous that miscellaneous adjustments normally designed to meet special situation or problem should be worked out by parties themselves and Board has not, therefore, solved these issues except in unusual circumstances.—E. I. duPont de Nemours & Co., 26 War Lab. Rep. 67.

65.800 Waiting Time

See Wages—Incentive Wage Systems, 260.124

75. JOB CLASSIFICATIONS

75.050 Adjustment of Classifications

★Airframe company and union should evaluate cafeteria jobs and place them within labor grades which are now applied to production and maintenance work. Company's main competitor in area has slotted its cafeteria jobs into its factory labor grades and similar slotting in instant case should eliminate whatever intra-plant inequities now exist in instant company.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

Region III (Philadelphia)

Increased rate ranges previously approved by Board on joint application by

parties should be applied, as demanded by union, so that all employees will occupy same relative position within new range as they occupied under old wage scale. Company's contention is rejected that preservation of existing intra-plant relationships under new rate ranges will result in average increase in excess of that originally approved by Board. (Region III—Philadelphia)—Atlantic Steel Castings Co., 26 War Lab. Rep. 102.

75.300 Establishment of Classifications

75.330 —Union approval of classifications

★Regional Board order providing that company should grant union permission to review job classifications is modified to limit such review to "new" job classifications, where union's demands on this issue related to new classifications.—Zephyr Mfg. Co., 26 War Lab. Rep. 155.

77. JOB PROTECTION

77.050 Apprenticeship Rules

Employer's request that apprentice ratio be liberalized is denied since there is no likelihood of companies being able to hire more apprentices at present and union has, in past, showed willingness to relax ratio to meet particular needs. Contract should, however, provide for arbitration of any disputes arising from union's refusal to permit exceptions.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

77.220 Guaranteed Earnings

Contract should provide guarantee of 44 hours' work weekly for 52 consecutive weeks per year for full-time workers and for five nights and a Saturday weekly for 52 consecutive weeks per year for regular part-time employees where such provision is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's petition for review of Regional Board's order directing such clause is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Contract should provide that provision requiring annual wage guarantee is not subject to arbitration, as ordered by Regional Board. (1) Union claims that "to grant company right to arbitrate permanent lay-offs if business conditions dictate such course would threaten security of workers" and (2) provision for no arbitration of guaranteed wage clause is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's appeal for review is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

77.260 Hour Reduction Before Layoffs

Region V (Cleveland)

Union of patternmakers is entitled to clause in first contract providing that there shall be no layoffs as long as there is sufficient work to provide employees average of 24 hours' work per pay period. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

78. JOB VACANCIES

78.300 Filling Vacant Jobs

Board vacates Regional Board's order providing that positions occupied by regular full-time or regular part-time employees but which become vacant for any reason whatsoever must be filled immediately by company with another worker, despite fact that such clause is in effect in 95 per cent of contracts which union has with other employers in industry in area. Company claimed that clause would require it to maintain full complement of salesmen regardless of future curtailment of business.—Melville Shoe Corp., 26 War Lab. Rep. 30.

82. JURISDICTION OF BOARD

82.100 Basis of Jurisdiction

★Dispute of union with employer who has ceased business and moved to other state should be settled on merits by Regional Board since final decision in such situation may be rendered to extent that useful purpose will be served thereby.—Trav-Ler Karenola Radio & Television Corp., 26 War. Lab. Rep. 172.

82.300 Concurrent Jurisdiction with NLRB

82.307 —Bargaining unit

Region V (Cleveland)

Union certified by NLRB as bargaining representative of patternmakers and patternmaker apprentices is entitled to represent employees classified as helpers if they are doing approximately same work as patternmakers or patternmaker apprentices where, subsequent to NLRB determination, it was discovered that company had classification of helpers. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

110. MAINTENANCE OF MEMBERSHIP

110.100 Reason for Awarding Maintenance of Membership

110.126 —Employer hostility to union

★ Union whose membership was "wholly dissipated" by unfair labor practices of company is not entitled to award of preferential hiring in addition to maintenance of membership to restore union's representative status. Regional Board's order directing both maintenance of membership and preferential shop is modified by elimination of preferential-hiring clause. —Ellis-Klatscher Co., 26 War Lab. Rep. 161 (*amending* 21 War Lab. Rep. 485).

110.165 —Responsible union

Union of newspaper employees is entitled to maintenance of membership, despite finding of Newspaper Commission that union was irresponsible on grounds that it (1) demanded changes in contract prior to expiration, (2) repudiated agreement made by union representatives prosecuting case before Commission, and (3) failed to assume responsibility for strict maintenance of contract. Commission's order denying maintenance of membership is therefore reversed where Commission found that union had kept its no-strike pledge and had democratic constitution. Commission is requested, in view of Board's action on maintenance of membership issue, to issue order on union's request for check-off.—New York Herald-Tribune, 26 War Lab. Rep. 18 (*reversing* 22 War Lab. Rep. 430).

110.220 Reason for Denying Maintenance of Membership

110.260 —Irresponsible union

Board reverses order of Newspaper Commission which denied maintenance of membership on finding that union was irresponsible where Commission also found that union had kept its no-strike pledge and had democratic constitution.—New York Herald-Tribune, 26 War Lab. Rep. 18 (*reversing* 22 War Lab. Rep. 430).

110.279 —Strike after no-strike agreement

★ Regional Board properly denied, for six-month period, maintenance-of-membership clause of prior contract because union members engaged in four strikes. Such denial, however, should not bar consideration of issue in new case presently pending before Board and maintenance of membership should be restored to union effective from termination of six-month penalty period if union's record since issuance of Regional order is found to be satisfactory.—Bower Roller Bearing Co., 26 War Lab. Rep. 185.

110.897 Renewal of Maintenance-of-Membership Clause

★ Regional Board properly denied, for six-month period, maintenance-of-membership clause of prior contract because union members engaged in four strikes. Such denial, however, should not bar consideration of issue in new case presently pending before Board, and maintenance of membership should be restored to union effective from termination of six-month penalty period if union's record since issuance of Regional order is found to be satisfactory.—Bower Roller Bearing Co., 26 Lab Rep. 185.

114. MANAGERIAL FUNCTIONS

114.875 Work Force Size

Board vacates Regional Board's order providing that positions occupied by regular full-time or regular part-time employees but which become vacant for any reason whatsoever must be filled immediately by company with another worker. Company claimed that clause would require it to maintain full complement of salesmen regardless of future curtailment of business.—Melville Shoe Corp., 26 War Lab. Rep 30.

135. PREFERENTIAL SHOP

135.200 Hiring Preference for Union Members

135.220 —Hiring preference combined with membership maintenance

★ Union whose membership was "wholly dissipated" by unfair labor practices of company is not entitled to award of preferential hiring in addition to maintenance of membership to restore union's representative status. Regional Board's order directing both maintenance of membership and preferential shop is modified by elimination of preferential-hiring clause. —Ellis-Klatscher Co., 26 War Lab. Rep. 161 (*amending* 21 War Lab. Rep. 485).

140. PREMIUM WAGE RATES

140.200 Holiday Premium

140.230 —Award of holiday premium

Region III (Philadelphia)

Transit company employees are entitled to time and one-half for work performed

on any one of four specified annual holidays but, in accordance with industry practice, are not entitled to be paid when holiday is not worked. (Region III—Philadelphia) — Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.278 —Pay on holidays not worked

★ Employees are not entitled to straight-time pay for six annual holidays not worked, as ordered by Regional Board, where company contends that there is complete lack of industry, area, or company practice to support such order.—Paraffine Cos., 26 War Lab. Rep. 162.

Region III (Philadelphia)

Transit company employees are entitled to time and one-half for work performed on any one of four specified annual holidays but, in accordance with industry practice, are not entitled to be paid when holiday is not worked. (Region III—Philadelphia) — Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.400 Overtime

140.415 —FLSA-exempt employees

Region III (Philadelphia)

★ Restaurant employees in five department stores are entitled to receive time and one-third for hours in excess of 8 a day or between 40 and 44 a week and time and one-half for all hours in excess of 44 a week. Premium pay ordered will correct intra-plant inequity both within unit comprising restaurant employees and between restaurant employees and remaining department store employees. (Region III —Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

140.550 Shift Premium

140.565 —Nightwork premium

Newspaper Commission's denial of night-shift premiums for editorial employees is affirmed. If issue should arise in connection with new contract, however, Commission is requested to examine issue in light of Board's decisions since date of Commission's order and in light of any changed circumstances since issue was last considered.—New York Herald-Tribune, 26 War Lab. Rep. 18.

Region III (Philadelphia)

Transit company employees are entitled to premium of four cents per hour for all work performed between 6 p.m. and 6 a.m. despite fact that no important industry practice exists supporting award, since nightwork premiums are so generally paid throughout industry in general. Premiums shall not be put into effect, however, until award has been "pre-reviewed" and approved by National Board. (Region III—Philadelphia) — Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.589 —Second-shift and third-shift premiums

Union's request that lace manufacturers establish second-shift premium is denied since lace manufacturing is part of textile industry and second-shift premiums are not generally paid in textile industry, having been denied by National Board in recent textile cases.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

★ Plant protection employees in powder plant are entitled to night-shift premiums of four and six cents for work on second and third shifts respectively. Regional Board's order granting five and and ten cents on basis of area practice is amended accordingly, Regional Board having resolved doubt in favor of premium although employer claimed that base rates included compensation for night work.—Atlas Powder Co., 26 War Lab. Rep. 142 (*amending* 21 War Lab. Rep. 196.)

Region V (Cleveland)

Employees of company manufacturing industrial electric motor controls are entitled to have present night-shift premiums of five cents for second shift and ten cents for third increased to ten cents for both second and third shifts on basis of Regional Board's resolution that night-shift differential of ten cents an hour shall be granted for plants in electrical industry. Company's contention that area practice must govern is rejected. (Region V—Cleveland)—Electric Controller & Mfg. Co., 26 War Lab. Rep. 109.

155. SENIORITY

155.290 Exception to Seniority Provisions

Region V (Cleveland)

Board reverses prior order and grants union's request for discontinuance of clause of prior contract which provided that employees hired subsequent to Sept. 6, 1943, should be subject to replacement upon conclusion of war. Union contended, among other things, that retention of clause would permit favoritism in layoffs and that existing 30-day probationary period gives company adequate opportunity to weed out undesirables. (Region V—Cleveland)—Reynolds Metal Co., Inc., 26 War Lab. Rep. 95 (*reversing* 24 War Lab. Rep. 360).

155.400 Layoff and Rehiring

155.420 —Seniority as preference basis

★As applied to layoffs, reemployment, transfers, promotions, and demotions, seniority should govern where ability and skill are substantially equal. Regional Board's order providing that seniority shall be governing factor only if ability is relatively equal is modified accordingly. —Mines Equipment Co., 26 War Lab. Rep. 148.

155.500 Promotion Preference

155.540 —Length of service as preference basis

★As applied to layoffs, reemployment, transfers, promotions, and demotions, seniority should govern where ability and skill are substantially equal. Regional Board's order providing that seniority shall be governing factor only if ability is relatively equal is modified accordingly.—Mines Equipment Co., 26 War Lab. Rep. 148.

155.580 Supervisory Employees

Employees promoted to supervisory positions not covered by contract are entitled to retain their seniority rights for duration of war.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

155.600 Transfers

★As applied to layoffs, reemployment, transfers, promotions, and demotions, seniority should govern where ability and skill are substantially equal. Regional Board's order providing that seniority shall be governing factor only if ability is relatively equal is modified accordingly. —Mines Equipment Co., 26 War Lab. Rep. 148.

165. STRIKES

165.100 Board Procedure in Strike Cases

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute.—General Motors Corp., 26 War Lab. Rep. 53.

165.400 No-Strike Agreement in Contract

165.445 —Violation of no-strike, no-lockout clause

Contract should provide that there shall be no strikes or lockouts for period of contract. Regional Board's order providing for no strikes, lockouts, interference with production, and picketing and directing that any employee, supervisory or otherwise, who violates or advocates violation of contract should be disciplined on first offense and discharged on second offense is vacated.—Alabama Mills, Inc., 26 War Lab. Rep. 12.

165.500 Penalty for Strike After No-Strike Agreement

165.540 —Union security denial

★Regional Board properly denied, for six-month period, maintenance-of-membership clause of prior contract because union members engaged in four strikes. Such denial, however, should not bar consideration of issue in new case presently pending before Board, and maintenance of membership should be restored to union effective from termination of six-month penalty period if union's record since issuance of Regional order is found to be satisfactory.—Bower Roller Bearing Co., 26 War Lab. Rep. 185.

172. UNION AFFAIRS

172.400 Posting Union Notices

★Union is entitled to post official notices on company-furnished bulletin board after notices have been approved by plant personnel department, as was provided in prior contract. Union is not entitled, however, to post notices unapproved by company, as was provided by Regional Board, where company claimed prior provision is part of all contracts between it and other unions and no claim was made that company ever abused its discretion.—Paraffine Cos., 26 War Lab. Rep. 163.

205. VACATIONS

205.300 Vacation Plan

205.320 —Liberalized plan

205.323 — —Award of liberalized plan

Lace employees, all of whom now receive one week's vacation with pay equal to two per cent of annual earnings, are entitled to liberalization of vacation plan to provide second week's vacation after five years' service since (1) National Board granted second week's vacation in cotton

garment case and (2) branches of textile industry in which only one week is granted are also branches in which employers provide group insurance at cost of about two per cent of payroll. Because of manpower shortage and to prevent depriving other employees of work during extended vacation shutdown, however, employers are granted option of giving pay in lieu of second week's vacation.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

★ As directed by Regional Board, employees are entitled to second week's vacation after five years of service, but Regional Board's order granting pro-rated vacations between one and five years is vacated.—Zephyr Mfg. Co., 26 War Lab. Rep. 155.

205.332 —Plan less liberal than prior practices

★ Bonus of three per cent of straight-time earnings which was previously paid to all employees in lieu of vacations should be continued with respect to employees who, at time of vacation period, are not eligible for vacation under vacation plan directed by Regional Board. Board accordingly amends Regional Board's order which directed elimination of bonus plan and establishment of one-for-one and two-for-five vacation plan with vacation pay being three and four per cent of straight-time earnings for one and two weeks' vacation, respectively.—American Brake Shoe Co., 26 War Lab. Rep. 209.

205.700 Bonus in Lieu of Vacation

★ Bonus of three per cent of straight-time earnings which was previously paid to all employees in lieu of vacations should be continued with respect to employees who, at time of vacation period, are not eligible for vacation under vacation plan directed by Regional Board. Board accordingly amends Regional Board's order which directed elimination of bonus plan and establishment of one-for-one and two-for-five vacation plan with vacation pay being three and four per cent of straight-time earnings for one and two weeks' vacation, respectively.—American Brake Shoe Co., 26 War Lab. Rep. 209.

225. WAGE ADJUSTMENTS (not elsewhere classified)

225.100 Ability to Pay Increased Wages

225.137 —Ability to pay immaterial

Region VIII (Dallas)

★ Laundry employees are entitled to general eight-cent increase requested by union to correct substandards and maintain intra-plant differentials, such increase bringing minimum rate up to 40 cents an hour and being made retroactive to expiration date of prior contract. Contention that present wage level is already above level supportable by laundry industry generally in region and that, therefore, award is harsh and unrealistic is rejected since award is clearly justified under substandards policy and it is against WLB policy for Board to consider ability to pay. (Region VIII—Dallas)—Galveston Model Laundry et al., 26 War Lab. Rep. 224.

225.300 Effective Date of Wage Adjustments

225.330 —Retroactive effective date

225.331 — —In general

Awarded wage adjustments should be retroactive to date on which parties met with Conciliation Commissioner after written presentation of request for awarded adjustment. Parties' prior agreements have been informal and unwritten and Board's customary criteria for determining retroactive dates, therefore, are not applicable.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

225.338 — —Certification of dispute to Board

Region V (Cleveland)

Awarded adjustments should be retroactive to date on which union first presented specific demands to company subsequent to its certification by NLRB. Minority contends that decision contravenes National Board's policy of making first contracts retroactive only to date on which dispute is certified to WLB. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

225.343 — —Contract negotiations, commencement

Region V (Cleveland)

Awarded adjustments should be retroactive to date on which union first presented specific demands to company subsequent to its certification by NLRB. Minority contends that decision contravenes National Board's policy of making first contracts retroactive only to date on which dispute is certified to WLB. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

Region XII (Seattle)

Wage adjustments ordered by Board should be retroactive to date on which negotiations for wage increase began rather than to earlier date on which contract expired where negotiation for new

contract was delayed for long period and there is no evidence that employer was in any way responsible for delay. In view of fact that prior contract did exist, however, Board sets retroactive date as date on which negotiations began rather than later date on which dispute was certified to Board. (Region XII—Seattle)—Pacific Fruit and Produce Co., 26 War Lab. Rep. 129.

225.353 — —Expiration date of prior contract

Region VIII (Dallas)

★ Laundry employees are entitled to general eight-cent increase requested by union to correct substandards and maintain intra-plant differentials, such increase bringing minimum rate up to 40 cents an hour and being made retroactive to expiration date of prior contract. Contention that present wage level is already above level supportable by laundry industry generally in region and that, therefore, award is harsh and unrealistic is rejected since award is clearly justified under substandards policy and it is against WLB policy for Board to consider ability to pay. (Region VIII—Dallas)—Galveston Model Laundry, et al., 26 War Lab. Rep. 224.

225.364 — —Going rates effective

★ Wage adjustments directed by Regional Board on basis of area foundry rates established pursuant to "rare and unusual" proceedings should be made retroactive to same date as were rates in "rare and unusual" cases. Board's prior order making instant adjustments retroactive only to date on which "rare and unusual" rates were approved by Regional Board is amended accordingly.—Pettibone Mulliken Corp., 26 War Lab. Rep. 162 *(amending* 24 War Lab. Rep. 625).

225.379 — —Panel hearing

★ Wage adjustments which result from directed reclassification of cafeteria jobs should be retroactive only to date of panel hearing. Panel recommended no retroactivity on ground that, prior to hearing, union had made only generalized and unapprovable wage demands and had not requested any adjustment of cafeteria jobs as such.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

225.396 — —Wages first became issue in negotiations

Region XII (Seattle)

Wage adjustments ordered by Board should be retroactive to date on which negotiations for wage increase began rather than to earlier date on which contract expired where negotiations for new contract was delayed for long period and there is no evidence that employer was in any way responsible for delay. In view of fact that prior contract did exist, however, Board sets retroactive date as date on which negotiations began rather than later date on which dispute was certified to Board. (Region XII—Seattle)—Pacific Fruit and Produce Co., 26 War Lab. Rep. 129.

225.398 Computation of Retroactive Adjustment

★ Computation of sums due employees under retroactive application of directed wage-progression plan should be left to parties for settlement reasonably related to principles of established plan, increases granted since retroactivity date to be offset against amounts otherwise due. Regional Board's order setting forth specific method of computation is vacated.—Mines Equipment Co., 26 War Lab. Rep. 148.

225.630 Length-of-Service Wage Increases

★ Computation of sums due employees under retroactive application of directed wage-progression plan should be left to parties for settlement reasonably related to principles of established plan, increases granted since retroactivity date to be offset against amounts otherwise due. Regional Board's order setting forth specific method of computation is vacated.—Mines Equipment Co., 26 War Lab. Rep. 148.

225.640 Merit Wage Increases

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether employers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

225.900 Voluntary Wage Adjustment

225.945 —Wage approval cases

Region III (Philadelphia)

Increased rate ranges previously approved by Board on joint application by parties should be applied, as demanded by union, so that all employees will occupy same relative position within new range as they occupied under old wage scale. Company's contention is rejected

that preservation of existing intra-plant relationships under new rate ranges will result in average increase in excess of that originally approved by Board. (Region III —Philadelphia)—Atlantic Steel Castings Co., 26 War Lab. Rep. 102.

235. WAGE DIFFERENTIALS

235.180 Inter-Industry Differential

★Union's request that maintenance rates be increased in line with rates paid by company's subcontractors to construction employees is denied since rates paid to construction workers are generally higher than rates paid in industry in general.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

245. WAGES—COST-OF-LIVING ADJUSTMENTS

245.300 15 Per Cent Rule

245.310 —Application of 15 per cent rule

245.3101 — —In general

Newspaper Commission's order denying union request for application of increase due under Little Steel formula to all minimum rates but granting increase in one classification and modifying minimum rates for several other classifications is affirmed. Commission is requested, however, to examine question of raising contract minima in light of Board decisions made subsequent to date on which Commission's order was issued and in light of any changed circumstances since case was considered by Commission.—New York Herald-Tribune, 26 War Lab. Rep. 18.

Newspaper Commission's award of general increase of $2.50 weekly to employees earning less than $50 is remanded for reconsideration in light of current policies. Award was made on basis of finding that, under interpretation by War Labor Board of arbitration award involving same parties and involving question of calculation of Little Steel increase, employees were entitled to further average increase of 77 cents a week. Instead of granting 77 cents to all employees, however, Commission made equivalent award of $2.50 to employees earning less than $50 on ground that it is WLB policy to favor low-paid employees in making cost-of-living adjustments.—New York Herald-Tribune, 26 War Lab. Rep. 18.

245.3195 — —Unit for application of rule

★Regional Board should reconsider denial of Little Steel wage adjustment to employees of one commercial printing firm where denial was result of applying formula to the three commercial printers in area as a unit. Parties contended (1) that Little Steel increase would be due if formula were applied to instant company as separate unit and (2), that, although rates are identical with those paid by other two firms, they are below those paid by newspapers in area—Lyons, Harris & Brooks Printing Co., 26 War Lab. Rep. 197.

245.340 —Prior increases exceeding 15 per cent

★Union's request for general wage increase is denied since, among other things, prior increases since Jan. 1, 1941, have exceeded 15 per cent.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

250. WAGES—GOING WAGE RATES

250.050 Application of Going Rate Criterion

250.051 —In general

Region I (Boston)

Union of bakery salesmen negotiating first contract with companies in local area where majority of firms are unorganized is entitled to wage increase from $16 per week plus 7 per cent commission to $16 per week plus 8 per cent commission, despite contention that very large proportion of baking industry in New England area is covered by master contract requiring rate of $18 and 8 per cent commission. Present award will go part way toward eliminating inequity between instant companies and majority of industry in New England area but will not equalize rates of newly organized companies competing in unorganized territory with rates of companies that have been under contract for eight years. (Region I—Boston) —Genest Bros., Inc., Drake Bakeries, Inc., 26 War Lab. Rep. 111.

250.052 —Appropriate bracket

★Union's request that maintenance rates be increased in line with rates paid by company's subcontractors to construction employees is denied since rates paid to construction workers are generally higher than rates paid in industry in general.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

250.060 Incentive work

★Regional Board's order raising base pay of commission and non-commission bakery

driver salesmen from $55 to $60 for 48-hour workweek is vacated where, contrary to WLB policy, Regional Board included incentive earnings in data used in setting bracket in order to justify $60 bracket.—Seattle Bakers Bureau, Inc., 26 War Lab. Rep. 201.

250.200 Adjustment Above Minimum Going Rates

250.205 —Denial of adjustment

★ Union requests for general wage increase is denied since existing rates are among highest in area and prior increases since Jan. 1, 1941, have exceeded 15 per cent. —Curtiss-Wright Corp., 26 War Lab. Rep. 134.

250.300 Determination of Going Rates

★ Regional Board's order raising base pay of commission and non-commission bakery driver salesmen from $55 to $60 for 48-hour workweek is vacated where, contrary to WLB policy, Regional Board included incentive earnings in data used in setting bracket in order to justify $60 bracket.—Seattle Bakers Bureau, Inc., 26 War Lab. Rep. 201.

250.960 Transit Industry Formulae

250.967 —Suburban transit line

Region XII (Seattle)

Rate of suburban bus drivers is raised from $1.00 to $1.05 per hour since (1) under national transit policy suburban rates may be raised to next five-cent interval below average transit rate in area in April 1944, (2), as result of retroactive adjustment of rate of dominant property from $1.05 to $1.08, average rate effective in area on April 1, 1944, was above rather than below $1.05, and (3) wartime changes in conditions justify reduction in differential between suburban and dominant rates. Prior denial of increase, which was based on assumption that dominant company's April 1944 rate was $1.05, is therefore reversed. (Region XII—Seattle)—East Side Busses, Inc., et al., 26 War Lab. Rep. 93.

260. WAGES—INCENTIVE WAGE SYSTEMS

260.100 Adjustment of Piece Rates

260.124 —Intra-company inequities

Lace manufacturers should grant five per cent increase in contractural minimum incentive rate (minimum rack price) since (1) parties came very close to agreeing on such increase, (2) not more than 40 per cent of employees will be benefited thereby, such employees being lowest paid group, and (3) essential purpose of increase is to eliminate intra-plant inequities.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

260.184 Downtime

Union's request that lace manufacturers pay for work of tying in beams, as such, is denied since, among other things, (1) for years existing incentive rates have, in effect, compensated for machine downtime necessary for tying in beams and (2) union failed to present any factual data showing that there is loss of earnings on styles where there are many beams.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

265. WAGES—INEQUALITIES

265.100 Inequalities as Reason for Wage Adjustment

265.135 —Inequalities within plant

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★ Airframe company and union should evaluate cafeteria jobs and place them within labor grades which are now applied to production and maintenance work. Company's main competitor in area has slotted its cafeteria jobs into its factory labor grades and similar slotting in instant case should eliminate whatever intra-plant inequities now exist in instant company. —Curtiss-Wright Corp., 26 War Lab. Rep. 134.

265.158 —Inequalities between unionized plants

Region I (Boston)

Union of bakery salesmen negotiating first contract with companies in local area where majority of firms are unorganized is entitled to wage increase from $16 per week plus 7 per cent commission to $16 per week plus 8 per cent commission, despite contention that very large proportion of baking industry in New England area is covered by master contract requiring rate of $18 and 8 per cent commission. Higher rate is result of eight years' negotiation and present award, which is equal to rates paid by majority of industry prior to Trucking Commission's directive order fixing $18 and 8 per cent for master contract, will go part way toward eliminating inequity between instant companies and majority of industry in New England area but will not equalize rates of newly organized companies competing in unorganized territory with rates of companies that have been under contract for eight years. (Region I—Boston)—Genest Bros., Inc., Drake Bakeries, Inc., 26 War Lab. Rep. 111.

265.300 Creation of Inequalities as Ground for Denying Adjustment

★ Union's request that maintenance rates be increased in line with rates paid by company's subcontractors to construction employees is denied, since among other things, requested adjustments would create inequalities in plant's existing job classification system.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

275. WAGE—JOB RATES

275.500 Job Rates for Transferees Within Plant

West Coast Lumber Commission

★ Lumber pliers assigned to lower-rated jobs should receive rate of pay for such lower-rated jobs when assignment is made for convenience of employees. Order is within intent of parties' contract, which provides that company may, with their consent, transfer employees to lower-rated job in lieu of layoff and pay them at rate of position to which transfer is made. (West Coast Lumber Commission)—McGoldrick Lumber Co., 26 War Lab. Rep. 216.

285. WAGES—MINIMUM RATES

285.400 Increase in Minimum Rates

285.410 —Cost-of-living adjustment

Newspaper Commission's order denying union's request for application of increase due under Little Steel formula to all minimum rates but granting increase in one classification and modifying minimum rates for several other classifications is affirmed. Commission is requested, however, to examine question of raising contract minima in light of Board decisions made subsequent to date on which Commission's order was issued and in light of any changed circumstances since case was considered by Commission.—New York Herald-Tribune, 26 War Lab. Rep. 18.

295. WAGES—SUBSTANDARD RATES

295.200 Elimination of Substandard Rates

Region VIII (Dallas)

★ Laundry employees are entitled to general eight-cent increase requested by union to correct substandards and maintain intra-plant differentials, such increase bringing minimum rate up to 40 cents an hour and being made retroactive to expiration date of prior contract. Contention that present wage level is already above level supportable by laundry industry generally in region and that, therefore, award is harsh and unrealistic is rejected since award is clearly justified under substandards policy and it is against WLB policy for Board to consider ability to pay. (Region VIII—Dallas)—Galveston Model Laundry, et al., 26 War Lab. Rep. 224.

295.600 Substandard Rates as Ground for General Increase

Region III (Philadelphia)

★ Hourly wage rates for all job classifications of restaurant employees in five department stores are raised by 2½ cents per hour under Board's authority to eliminate substandards where some rates are substandard and general increase rather than tapering adjustments is indicated by intra-plant considerations. Aggregate amount awarded equals aggregate which would have been required to establish minimum standard rate of 55 cents for all non-tipped employees and rate of 45 cents for those receiving tips and meals.

(Region III—Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

330. WORKING CONDITIONS

330.920 Work Rules

Company should discontinue present practice of requiring employees to compute their own daily earnings, except that workers should maintain production record on form supplied by company, where union contends that (1) practice leads to confusion and disputes, (2) calculation of pay is function of management, and (3) present time allowance of five minutes is inadequate to cover time required for complicated calculations.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Umpire may consider application of rule under all circumstances of case which include fact that rule was not in effect in plant from which suspended employees had been recently transferred. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.—General Motors Corp., 26 War Lab. Rep. 53.